

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

October 17, 2018 - 9:00 a.m.
 49 Donovan Street
 Concord, New Hampshire

DAY 11
Morning Session ONLY

{Electronically filed with SEC 10-29-18}

IN RE: SEC DOCKET NO. 2015-04
Application of Public
Service of New Hampshire
d/b/a Eversource
Energy for Certificate
of Site and Facility
(Adjudication Hearing)

PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:

Patricia Weathersby <i>(Presiding Officer)</i>	Public Member
David Shulock	Public Utilities Comm.
Dir. Elizabeth Muzzey	Div. of Hist. Resources
Charles Schmidt, Admin.	Dept. of Transportation
Dir. Christopher Way	Div. of Economic Dev.
Michael Fitzgerald	Dept. of Env. Services
Susan Duprey	Public Member

ALSO PRESENT FOR THE SEC:

Michael J. Iacopino, Esq. Counsel for SEC
(Brennan, Lenehan, Iacopino & Hickey)

Pamela G. Monroe, SEC Administrator

(No Appearances Taken)

COURT REPORTER: Cynthia Foster, LCR No. 14

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P R O C E E D I N G S

(Hearing resumed at 9:00 a.m.)

PRESIDING OFFICER WEATHERSBY: Okay.

Welcome back. We have a new witness. If Mr. Hebert could be sworn in, please.

(Whereupon, **Denis Herbert** was duly sworn by the Court Reporter.)

DENIS HEBERT, SWORN

PRESIDING OFFICER WEATHERSBY: Ms. Geiger.

DIRECT EXAMINATION

BY MS. GEIGER:

Q Good morning, Mr. Hebert. Could you please state your name and spell both your first and last names for the record?

A Certainly. My name is Denis Hebert. My first name is D E N I S. Last name is H E B E R T.

Q Mr. Hebert, where do you live?

A I live in Gundalow Landing in Newington, New Hampshire.

Q Do you hold any positions within the Town of Newington?

A I do, and I am the Chairman for the Newington Planning Board.

Q And how long have you held the position of

1 Chairman of the Newington Planning Board?

2 A Since 2002.

3 Q And how long have you served on the Newington
4 Planning Board?

5 A For 22 years.

6 Q Could you please briefly describe for the
7 Committee what your responsibilities are as
8 Chairman of the Newington Planning Board?

9 A Certainly. My duties as the Planning Board
10 Chair are to lead the board in developing and
11 maintaining the town master plan and ordinances,
12 scheduling public hearings for possible land
13 development and uses according to those
14 documents, and making sure that the town is
15 developing in an orderly fashion and as
16 described by the town's master plan.

17 Q Could you please briefly describe your
18 professional and educational background?

19 A Yes. I am, I hold a bachelor of science of
20 electrical engineering from the University of
21 New Hampshire. I spent 34 years in the United
22 States Air Force in the Air National Guard. I
23 rose to the rank of Lieutenant Colonel and held
24 positions on the base of Civil Engineer and the

1 Base Fire Marshal for Pease Air Force Base.

2 During my career, I was responsible for
3 design, construction and final acceptance for
4 several large projects, including a 345 kilovolt
5 line, substation and underground electrical
6 distribution systems and many other related
7 energy projects and as well as many civil
8 engineering projects.

9 I retired from the Air Force in December of
10 2008, and thereafter was employed by United
11 States Navy as a Planner for the overhaul of
12 electrical systems on submarines until May of
13 2015.

14 Q Mr. Hebert, when you respond, could you speak a
15 little bit closer to the microphone just so that
16 everyone can hear?

17 A I'm sorry. Is that better?

18 Q Yes. Thank you.

19 A Just speak up. If I'm not doing it, let me
20 know.

21 Q Mr. Hebert, did you submit Prefiled Testimony in
22 this docket on behalf of the Town of Newington?

23 A Yes, I did.

24 Q Do you recognize Newington Exhibit 1 and

1 Newington Exhibits 1-1 through 1-12 as your
2 Prefiled Direct Testimony and Attachments?

3 A I do.

4 Q Do you recognize Newington Exhibit 2 and
5 Newington Exhibits 2-1 through 2-4 as your
6 Supplemental Prefiled Testimony and Attachments?

7 A Yes. I do.

8 Q Do you have any corrections to your Prefiled
9 Direct or Supplemental Prefiled Testimony?

10 A I do.

11 Q Could you please briefly run through them?

12 A Certainly. On page 6, line 14, of my Prefiled
13 Direct Testimony, Newington Exhibit Number 1,
14 the number 1.5 should be changed to 2.3 square
15 miles.

16 On page 15, line 12, of my Prefiled Direct
17 Testimony, Newington Exhibit number 1, the words
18 "for local voltage control" should be added
19 after the letter "A" which appears in
20 quotations.

21 On page 19 of my Prefiled Direct Testimony,
22 Newington Exhibit number 1, lines 14 and 15
23 should read, quote, "as indicated in the
24 Attachment DJH-7, pages 4-6, Gosling Road would

1 require just three" -- this is the change --
2 "new circuit miles as compared with 19 new
3 circuit miles of low voltage transmission
4 lines."

5 Q Excuse me, Mr. Hebert. Is the word low voltage
6 or high voltage?

7 A Excuse me. High voltage. I did say low
8 voltage. My apologies.

9 Q Thank you. Do you have any other changes or
10 corrections?

11 A I do. On page 6, line 20, of my Prefiled Direct
12 Testimony, Newington Exhibit number 1, the line
13 should read yes, Newington has adopted a master
14 plan for 2010 and 2020.

15 A new sentence after that should be added,
16 and this is the addition. "This master plan was
17 adopted in 2009 and the Utility Easements
18 section at pages 25 and 26 was amended in 2015."

19 Q Mr. Hebert, turning to page 19, line 22, of the
20 Exhibit 1, could you please indicate whether you
21 should correct the number 19 to another number?

22 A Yes. Thank you very much. On page 19, line 22,
23 of my Prefiled Direct Testimony, Exhibit number
24 1, the number 19 should be changed to 12.9.

1 Q Thank you. Mr. Hebert, do you have any updates
2 to your testimonies?

3 A Yes. I would like to update my Prefiled Direct
4 Testimony and Supplemental Prefiled Direct
5 Testimony to correct some inaccuracies in the
6 record of this proceeding which have occurred
7 since I filed these testimonies. More
8 specifically, I'd like to make sure the record
9 is clear on what is contained in the Newington
10 master plan and zoning ordinances.

11 MR. NEEDLEMAN: Madam Chair, I object.
12 This is additional testimony at this point.

13 PRESIDING OFFICER WEATHERSBY: Attorney
14 Geiger?

15 MS. GEIGER: Yes, I would agree. It is
16 additional testimony. It's an update to the
17 Prefiled Testimony to clarify the record, and I
18 think it's important that the Committee have an
19 accurate record before it, and I believe
20 Mr. Hebert as Chairman of the Planning Board is
21 in the best position to provide you with the
22 most accurate information about what the Town of
23 Newington's master plan and zoning ordinances
24 say and don't say.

1 PRESIDING OFFICER WEATHERSBY: I'll
2 overrule the objection. You may continue.

3 BY MS. GEIGER:

4 Q Mr. Hebert, would you continue, please, with
5 your updates?

6 A Certainly. Regarding the Newington zoning
7 ordinance, first, the Newington zoning ordinance
8 Article 4 Section 1 says that, quote, "The
9 omission of a use from the list of those allowed
10 in a particular district constitutes prohibition
11 of that use in that district," end of quote.

12 Q And Mr. Hebert, just to interrupt you briefly,
13 the zoning ordinance to which you refer, has
14 that been marked as Newington Exhibit 17?

15 A Yes, it has.

16 Q Thank you.

17 A Second, in Article 3 Section 5 V, permits public
18 utility, transportation or communication
19 facilities, cell towers in the industrial zone
20 but the list of the permitted uses in the
21 residential zone contained in Article 3 Section
22 1 B does not mention public utility,
23 transportation or communication facilities.

24 PRESIDING OFFICER WEATHERSBY: Mr. Hebert,

1 could you slow down just a little bit?

2 A I will try. Thank you. Thank you for saying
3 that. I don't want to speed along too fast.
4 Thank you.

5 PRESIDING OFFICER WEATHERSBY: Thank you.

6 A Therefore, those uses are prohibited in the
7 residential zone. In addition, communication
8 facilities such as cell towers are not allowed
9 in the residential area due to height
10 restrictions due to the Pease airport and the
11 FAA height restrictions.

12 Third, contrary to Mr. Varney's testimony,
13 there are height restrictions on buildings and
14 structures in the Newington residential zone.
15 The maximum height allowed in the residential
16 area is 35 feet per Article 7 of the zoning
17 ordinance.

18 Regarding the Newington master plan, as
19 indicated in my response to Eversource in Data
20 Request 5 A which has been marked as Applicant
21 Exhibit 198, the Newington master plan utility
22 easement section was adopted in 2009. The plan
23 was submitted by Eversource in its redirect
24 examination of the Construction Panel and marked

1 Applicant Exhibit 199. As far as I can tell,
2 Eversource did not file that master plan with
3 this Application as required by the SEC rules.

4 The only change that had been made to the
5 master plan that was adopted in 2009 is the one
6 reflected in the Newington Exhibit 1-4. That
7 change was made in February 2015, a year before
8 Eversource filed its Application in this docket.

9 Other than that change was which expressly
10 requires that the transmission lines in the
11 residential district be buried, no other changes
12 have been made to the master plan that was
13 adopted in 2009.

14 I would like the Committee to note that the
15 Applicant's Exhibit 199 is not the most current
16 version of the public utility section in
17 Newington's master plan. If the Committee
18 substitutes Newington Exhibit 1-4 for pages 25
19 and 26 of Applicant's Exhibit 199, they will
20 then have a correct version of the public
21 utility section of the master plan.

22 Am I going slow enough? I'm just trying to
23 keep it -- is that good?

24 COURT REPORTER: Thank you.

1 BY MS. GEIGER:

2 Q Mr. Hebert, you referenced Applicant's Exhibit
3 199. Were you aware that the Applicant recently
4 filed another exhibit, 227, which purports to be
5 the entire master plan for the Town of
6 Newington?

7 A I am. Yes.

8 Q Do you believe that that document is correct and
9 updated?

10 A No, I do not.

11 Q And why is that your opinion?

12 A Doesn't contain pages 25 and 26 of the actual
13 master plan.

14 Q Okay. Thank you.

15 A Regarding documents appearing on the Newington
16 website, in late 2014, the Town decided to
17 transition to a new website for release in
18 January 2nd of 2015. The website took several
19 months to develop in 2014. Many old files,
20 minutes and agendas, approximately 4000
21 documents, and many other documents that were
22 very large were not transferred to the new
23 website. Because of its size, the 2010 to 2020
24 master plan was not transferred to the new

1 website but is available upon request.

2 The files that were not transferred over to
3 the new website were archived in a separate
4 storage device in the Town Hall. So any other,
5 so anyone going to the town website in 2014
6 would have seen the 2010 master plan, but after
7 January 2nd, 2015, the master plan would not
8 have been seen on a town webpage.

9 Q Mr. Hebert, subject to the corrections and
10 updates that you just discussed, do you adopt
11 your Prefiled Direct and Supplemental Prefiled
12 Direct Testimonies today under oath?

13 A Yes, I do.

14 Q Are you familiar with Newington Exhibit 3, the
15 Prefiled Direct Testimony of Eric Weinrieb which
16 was filed on behalf of the Town of Newington in
17 this docket?

18 A Yes.

19 Q Do you adopt that testimony under oath here
20 today?

21 A Yes, I do.

22 MS. GEIGER: The witness is available for
23 cross-examination.

24 PRESIDING OFFICER WEATHERSBY: Thank you.

1 that time, the lines were being taken down or
2 proposed to be taken down on Gundalow Landing,
3 and that's why they're not there today. Couple
4 of the residents in the neighborhood took down,
5 paid for taking down those lines.

6 But in talking to, in one of those meetings
7 I had with the Air National Guard and with the
8 representative and I think it was Mike Coffey if
9 I remember right. I remember his name really
10 well because "coffee." So the comment he made,
11 when I asked him about it, it was connected up
12 to the same power lines that is connected to
13 Gundalow Landing which went across the Bay, and
14 I said why are you giving these up? And he said
15 we will never cross that Little Bay because of
16 the environmental issues. He said we're just
17 not going there. We have roads to go around
18 Little Bay which is to the north and to the
19 south, and that's where they currently are.

20 Q I want to clarify one other thing for the
21 record.

22 To the best of your knowledge, did the Town
23 of Newington ever receive notice of the Project
24 when it was pending before the ISO?

1 A No.

2 Q When did you first hear about it?

3 A In a letter which I still have here some place,
4 it was I think dated November 2013 that they
5 were, wanted to come, that they were proposing a
6 Project to come through the town.

7 Q So it sounds like it was around the same time
8 that Mr. Selig indicated yesterday Town of
9 Durham heard.

10 A That's about right. I think the Town of Durham,
11 I think the four towns received the notice at
12 the same time.

13 Q In looking through your resume and which you've
14 indicated this morning, you have a bachelor of
15 science degree in electrical engineering,
16 correct?

17 A That's correct.

18 Q And I'm looking at your Original Testimony. I
19 believe it's Newington Exhibit 1. And I'm
20 looking at, I've highlighted here on the screen
21 I believe it's page 15, lines 15 to 17, where
22 you said that Newington believes that proceeding
23 with the proposed transmission line project
24 instead of the Gosling Road Autotransformer

1 Solution is not in the public interest when one
2 examines all of the factors. Is that what you
3 said at that time?

4 A Yes, that's correct.

5 Q Now, I believe you've been present for virtually
6 all of the hearings. You may not have been here
7 on Monday, but other than that you've been here
8 essentially every day and heard the testimony
9 provided; is that fair to say?

10 A That is.

11 Q Do you still share the same opinion?

12 A I do.

13 Q Do you want to explain why you share that
14 opinion still?

15 A I believe that there's enough power here in the
16 region, in the Seacoast region to supply all the
17 power we need including the 115 voltage down to
18 lower voltages that's available that's on the
19 grid.

20 I also believe going back to the Gosling
21 Road option, if that's what we're doing, this is
22 my Original Testimony, that even with the
23 additional 22 percent additional cost of the
24 Project, that supplying over 210 percent more

1 power to the region, Seacoast region, is going
2 to be a huge benefit to the region in the long
3 run, and the reason I really feel that as well
4 is the region continuously grows. It hasn't
5 stopped growing, as far as I know, most of the
6 last century. And it's continuously rising and
7 it's been stated over and over again by many
8 witnesses that the power, the consumption is not
9 going down. The demand is not going down.

10 So my concern is that in 30 years from now
11 or 20 years from now when we have more growth in
12 the area and they can't keep up, the best option
13 is to have that 400 megawatt transformers
14 sitting there on Gosling Road ready to go. And
15 also, if you look at their matrices, it's the
16 Project with the most flexibility. It allows a
17 lot of available flexibility to Eversource to
18 provide power to the region.

19 So 22 percent more cost now? Another
20 Project like this 30 years from now? All of us
21 sitting here again 30 years from now? Well, I
22 hope to be, but why not avoid it if we can. Now
23 is the time to do it and do it right.

24 Q That's all the questions I have. Thank you.

1 PRESIDING OFFICER WEATHERSBY: Attorney
2 Irwin for the Conservation Law Foundation.

3 **CROSS-EXAMINATION**

4 **BY MR. HEBERT:**

5 Q Good morning, Mr. Hebert.

6 A Good morning.

7 Q For the record, Tom Irwin, Conservation Law
8 Foundation. I just have a few questions.

9 In your Prefiled Testimony, Mr. Hebert,
10 both Exhibits 1 and 2, you make reference to
11 concerns about concrete mattresses?

12 A Yes.

13 Q Specifically, and this is referring to
14 Supplemental Testimony, Exhibit 2, you state
15 that Newington is concerned that the
16 installation of concrete mattresses along the
17 shores of Little Bay will have an unreasonable
18 adverse effect on the aesthetics in this area.

19 Do you have your testimony before you?

20 A I don't. It's not being shown here. I can dig
21 it up if we have to.

22 Q That's all right. Has the Town's opinion
23 related to the aesthetic impacts of concrete
24 mattresses diminished in any way throughout the,

1 with additional information that you've come to
2 learn through this hearing process?

3 A I don't think it's diminished. In fact, I think
4 it's grown. Based on the information that I've
5 heard since we started with these hearings, it
6 appears to be that these mattresses may be
7 growing far beyond what was even being proposed
8 by Eversource.

9 MS. DUPREY: What's the Exhibit Number?

10 Q This is Applicant's Exhibit 122, and this is
11 page 28.

12 Mr. Hebert, have you seen this document
13 before?

14 A I believe I have. I think it's the same thing
15 that's been submitted.

16 Q This was discussed during the course of the
17 Construction Panel's testimony?

18 A Yes, it looks very familiar.

19 Q So when you refer to additional impacts of
20 concrete mattresses, are you referring to the
21 extension of concrete mattresses farther into
22 the Bay than originally had been anticipated by
23 the Town?

24 A Yes. I mean, the mattresses were something that

1 was coming in very late as far as information
2 for it like what it looks like, and Newington
3 has asked several times for what are these going
4 to look like and how far out they're going to
5 extend and then what is the true purpose of
6 them. Is it to keep boaters from running into
7 it during low tide or high tide and are they
8 going to have to cover the entire mud flats. So
9 that's been our concern right from the very
10 beginning. So yes, this is the concern for
11 Newington, and probably it sounds like it's the
12 same concern for Durham on the other side which
13 has a lot of mud flats.

14 Q So --

15 MS. DUPREY: Excuse me, Mr. Irwin. Could
16 you tell me what page this is? I'm not finding
17 it in the exhibit. Applicant's 122?

18 Q Applicant's 122. Page 28.

19 MS. DUPREY: Oh, 28. I'm sorry. Thanks.

20 MR. IRWIN: Yes.

21 Q And just for the record, this document shows the
22 Newington side of Little Bay?

23 A That's correct.

24 Q And the landfall of the proposed cable.

1 So Mr. Hebert, has any analysis that's been
2 provided by Eversource and its consultants
3 relative to the visual impacts of these concrete
4 mattresses provided the Town any comfort?

5 A From what I've seen on the documents that I've
6 looked at, they have not. There may be
7 something that has been, there's been hundreds
8 and hundreds of documents that have been filed,
9 but from what I've seen I haven't seen a
10 photosimulation which we've asked for for
11 Newington, under Newington's side. So I haven't
12 seen anything that satisfies anything putting
13 myself at ease or the Town, putting the Town at
14 ease, especially the people that live along that
15 shoreline.

16 Q And Mr. Hebert, beyond visual impacts, a few
17 moments ago you made reference to potential
18 impacts for boating activities. Could you
19 comment further on that concern?

20 A Well, I think it was mentioned yesterday that at
21 low tide there seems to be only a few inches of
22 water above those concrete mattresses and
23 whether or not there's going to be enough water
24 there to basically keep a boat from colliding

1 with it, and also I'm concerned about those
2 mattresses which are coming up on to the shore
3 whether or not they would block anyone walking
4 along the shoreline, just enjoying the
5 shoreline, and I know quite a few people do walk
6 down in that area.

7 Q Shifting gears briefly, yesterday, Mr. Hebert,
8 you heard testimony about the Town of
9 Newington's role as a Consulting Party in the
10 Section 106 process?

11 A Yes.

12 Q The Town of Newington was designated, was a
13 Consulting Party?

14 A Yes, it is.

15 Q How did the Army Corps of Engineers engage the
16 Town of Newington as a Consulting Party in that
17 process?

18 A It started back, I think it was September where
19 I got an email from the Army Corps of Engineers
20 who asked to have a meeting, and I said could
21 you please tell me what the meeting is about,
22 and they said we want to talk about the
23 transition of the brick transition house that's
24 on the shore. And I said are there going to, is

1 there an agenda for this, and at the time there
2 was not an agenda. And I said well, we need to
3 have more. Is there other things you're going
4 to be talking about. And the first iteration of
5 that there was not.

6 And then it turned into through a couple
7 emails and a phone call that we're also going to
8 invite New Hampshire DHR to the meeting, but
9 they wanted to set it up so that there was no
10 attorneys present, and I said why no attorneys,
11 and they said we just want to have a general
12 conversation with the Town of Newington to
13 discuss these particular issues.

14 Q Is that an unusual request in your experience?

15 A Well, I thought it was very odd. I thought it
16 was very odd that where we were at in this
17 Project that they did not want to have attorneys
18 present. And I think I said all right, well, I
19 guess I'll just show up and go to the meeting.

20 Q Yesterday Ms. Widell testified that Newington
21 was invited to join the Memorandum of
22 Understanding --

23 A That's correct.

24 Q -- the Army Corps, and it was hoped that it

1 will. When did the Town -- that it will join
2 the MOU? When did the Town receive the MOU from
3 the Army Corps of Engineers?

4 A I know there was something delivered yesterday
5 as a final document, but I initially found the
6 document which is buried in the two or three
7 hundred page exhibit from Eversource, and I
8 can't remember the exhibit. It was just quite
9 long. And I happened upon it by accident. And
10 it was a Draft MOU, it was something that was
11 being presented as evidence that they were
12 trying to, New Hampshire DHR with Eversource, I
13 think the Army Corps of Engineers, were trying
14 to put something together. That was the first
15 inkling I had of that.

16 From there, after several contacts, we
17 asked to be a part of it, and they then came to,
18 requested to come to the Town which myself and
19 our attorney was present, and we had also had a
20 list of projects that were considered for the
21 MOU at that time, and we just couldn't seem to
22 come to terms of what the conditions would be
23 for that MOU.

24 Q So at that time, the Town was provided a Draft

1 MOU to review, but it wasn't deemed acceptable
2 by the Town?

3 A It was not acceptable to the Town. It was
4 \$5,000 for the repair of some chimneys in the
5 Historic District.

6 Q And just to be clear, it was yesterday when the
7 Town received the final MOU to be signed if the
8 Town wants to sign it?

9 A Yes, and that was not the same MOU we were
10 looking at during the meeting with them. There
11 was a separate completely different MOU.

12 Q Thank you, Mr. Hebert. I have no further
13 questions.

14 PRESIDING OFFICER WEATHERSBY: Next
15 examiner, Attorney Brown for Durham Residents?

16 MS. BROWN: Durham Residents have no
17 questions. Thank you.

18 PRESIDING OFFICER WEATHERSBY: Ms. Mackie,
19 I understand you're down to ten minutes, but I
20 thought you had said you had no questions. No
21 questions. Thank you. Counsel for the Public.
22 Attorney Aslin.

23 MR. ASLIN: Thank you, Madam Chair.

24 **CROSS-EXAMINATION**

1 **BY MR. ASLIN:**

2 Q Good morning, Mr. Hebert.

3 A Good morning.

4 Q For the record, I'm Chris Aslin, designated as
5 Counsel for the Public for these proceedings.

6 Mr. Hebert, I want to follow up a little
7 bit on the testimony we just heard about
8 Newington's role as a Consulting Party in the
9 Section 106 process, and I understand that
10 Newington was a Consulting Party. When did that
11 designation occur?

12 A I honestly don't remember. It was early on in
13 the process.

14 Q So several years ago or at least a couple years
15 ago?

16 A As soon as the Application was in.

17 Q Okay. And was the Town contacted by either DHR
18 or the US Army Corps to be solicited to be a
19 Consulting Party or did the Town reach out?

20 A The Town reached out.

21 Q We just heard some testimony about some recent
22 meetings, it sounded like, but was the Town
23 involved in meetings regarding the Section 106
24 process throughout the several-year time period?

1 A The only meetings that I'm aware of that were,
2 that was asked for was the ones I described.
3 First there was one, the Gosling Road power
4 station, Schiller Station. That was the very
5 first meeting that occurred.

6 The second meeting occurred in Durham, if I
7 remember right, but that was for Durham because
8 Durham wasn't invited originally to the first
9 meeting. Somehow they were accidentally not
10 included in the invite or the invite didn't get
11 to them somehow.

12 And then finally the third meeting was when
13 we actually met in the Town Hall with all the
14 members present, and that's the time when they
15 offered to put up \$5,000 of chimney repair in
16 the Historic District.

17 Q Okay. So prior to the last few months when the
18 MOU and mitigation were under discussion, what
19 was the Town's role as a Consulting Party in
20 this Section 106 party?

21 A I guess I don't understand the question. I'm
22 just trying to get --

23 Q Sure.

24 A I just don't -- go ahead. Could you rephrase

1 that, please?

2 Q I'd be happy to. It sounds like there have been
3 a very limited number of meetings, but you've
4 been engaged in the Section 106 process for at
5 least a couple of years. What kind of
6 interaction did you have with the 106 process
7 other than meetings?

8 A The only, the thing I remember is that there was
9 some, there was some list of, this is coming
10 back right now. There was some list of projects
11 that were not included with Eversource on the
12 original Application, and we identified that
13 there were some items missing, and this happened
14 during a Technical Session, and Eversource asked
15 what are those other items. We gave them, so we
16 gave them a list that we had and we were aware
17 of. That then, from there, that's, I believe
18 they amended their Application. And out of that
19 came some findings that were changed as you
20 heard yesterday from the expert that was here
21 speaking about the 106 process.

22 Q So periodically during this 106 process, was the
23 Town provided with draft documents regarding the
24 identification of historic resources or the

1 identification of effects to those historic
2 resources?

3 A Yes. They did do the updates. They also worked
4 with the Frink, the Frink Farm, trying to get
5 mitigation done for the Frink Farm. There was a
6 lot of focus on that. And they also did work on
7 updating the, like I said, the lists that were
8 needed to be updated, and we identified those
9 for Eversource, presented that and gave them
10 that and I do believe they then evaluated with
11 New Hampshire DHR and tried to get the changes,
12 and I think you'll see there were some revisions
13 that were done yesterday, and some of them that
14 were not on the list and some that were put on
15 the list. So there was work that was actually
16 happening.

17 Q Did the Town have an opportunity to comment on
18 draft documents along the way?

19 A As far as the MOU?

20 Q Setting aside the MOU. Documents that relate to
21 the identification or assessment of the facts of
22 historic resources?

23 A I think they were submitted. They were
24 submitted as far as I can see, and we did have a

1 chance to review them.

2 Q Okay. But I understand from what you were
3 testifying a couple minutes ago with Attorney
4 Irwin that with regard to the MOU you were not
5 provided an advanced copy until you asked for
6 one?

7 A We didn't even know it was going on. All right?
8 With the MOU between New Hampshire DHR, Army
9 Corps of Engineers, and it was MOU and an MOA,
10 and it was being worked out with Eversource. We
11 weren't a party of that. Until we objected that
12 we weren't a party and we wanted to be a party
13 of it, it wasn't happening. There was no
14 meeting with us. It looked like they were just
15 trying to look, go with getting the signatures
16 of those two agencies, the Army Corps of
17 Engineers and New Hampshire DHR, and having an
18 agreement with them to present to the Board, to
19 the Site Evaluation Committee. But as far as I
20 know there was not a signature, could have been,
21 a signature for us to sign off on. So until
22 then, I don't feel like we were a part of the
23 process other than identifying the buildings and
24 facilities or properties that should have been

1 on the list.

2 Q Okay. And then I think you said earlier that
3 once you raised the issue you were given an
4 opportunity to review a draft?

5 A Yes.

6 Q And the Town did comment on that draft.

7 A We said we weren't going to be a part of it.
8 All they were willing to offer was \$5,000, and
9 we said we don't think that's acceptable. In
10 fact, because we are a certified town, it was
11 easier for us to go ahead and to work with New
12 Hampshire DHR and get \$5,000 with them without
13 the amount of overhead we were going to need to
14 basically overlook overview of the Project when
15 it was being done to monitor the Project. It
16 was actually going to cost us more than \$5,000
17 to monitor it than to actually have them, you
18 know, do it ourselves.

19 Q Okay. So when you informed, I guess, DHR that
20 you were not interested in signing on to that
21 MOU, Draft MOU as written, were you given the
22 opportunity to suggest alternative mitigation?

23 A At the meeting we said, we said to them, we had
24 a list of projects. The very first project was

1 I think a \$250,000 project, and it was many
2 other items. I don't have the list in front of
3 me, which was going to -- it wasn't going to be
4 actually mitigating the impacts to the Historic
5 District. It's still going to be there. And to
6 settle for \$5,000, we just thought it wasn't
7 worth at this point signing off on it.

8 So we said no and that's all they were
9 offering to do. They would not change. They
10 said that's it.

11 Q But you did have the opportunity to suggest some
12 different mitigation, and apparently that was
13 not accepted by --

14 A That's correct. We gave them a list.

15 Q Okay. Thank you. Now, we'll set aside --

16 A Just to be sure. The list, the most expensive
17 item was the repair of the school, the stone
18 school in the Historic District. There were
19 about, if I remember right, 10 or 11 other items
20 on there that were far less expensive, but they
21 were not willing to go, Eversource was not
22 willing to go in that direction.

23 Q Okay. Thank you, Mr. Hebert.

24 Now, your initial testimony, the original

1 Prefiled Testimony which is Newington Exhibit 1,
2 you raised a number of concerns with different
3 aspects of the Project. And since that time,
4 which that was a year and a half ago when that
5 testimony was filed, there have been a number of
6 adjustments made and different commitments and
7 so I wanted to go over a few of the original
8 concerns and find out whether they have been
9 addressed in part or in whole to the Town's
10 satisfaction.

11 So the first one on pages 8 and 9 of your
12 Prefiled Testimony, you had raised a number of
13 concerns about stone walls and particularly
14 along scenic roads.

15 A Yes.

16 Q At this point, is the Town satisfied with the
17 Applicant's approach to stone walls in the Town
18 of Newington?

19 A I'm not sure. I was until yesterday.
20 Apparently there were no stone walls being
21 addressed to start with. And during the
22 Technical Sessions, the expert for the stone
23 walls at the time said there were no stone walls
24 being affected in Newington. I had taken

1 several pictures of them, showed them directly
2 where the lines were going to be going, and that
3 basically constituted or started their review of
4 looking for more stone walls, and they did come
5 up, I think, with about half a dozen of them.
6 I'm not sure if they include the one that was on
7 the Frink property that Helen Frink was talking
8 about yesterday or someone was talking about.
9 But as far as I can see all the stone walls were
10 addressed as far as I'm aware of, but I'm not
11 sure if it's a complete list.

12 Q Okay. So the Town is satisfied with the
13 proposed approach to stone walls, but you're not
14 certain that they have identified all stone
15 walls that may be impacted?

16 A I am okay with the approach and identifying
17 them. The one thing I'm concerned about is how
18 they're going to travel or traverse them. Are
19 they going to build a bridge over it or are they
20 going to lay just timbers on it and then drive
21 over those timbers which is going to compress
22 the stone down into the ground. I don't know
23 what they're going to be doing. That's still
24 not clear to me.

1 Q Okay. Another concern that you raised in your
2 Prefiled Testimony had to do with impacts to
3 town roads, repairs to lawns and other things,
4 and blasting, potentially, blasting effects, and
5 I understand that those issues have all been
6 resolved to the Town's satisfaction through the
7 MOU between Newington and Eversource?

8 A Yes. I believe so. I think the MOU addresses
9 the issues to our satisfaction. I'm just
10 concerned that they're going to be carried out
11 at the other end when it's finally done. For
12 example, it's hard to reestablish a lawn to its
13 original state if you take the loam out of that
14 lawn. Remove it, several inches thick, it's
15 farmland, it's old farmland and the lawns are
16 old farmland. If they take it out and bring
17 something else back and only put back four
18 inches, it's not going to establish the same
19 way. Same thing with the road. How do we do
20 this. I'm just concerned about -- the MOU is
21 good. I think it's a good thing that we did. I
22 think it addressed most of the issues. So I'm
23 pretty satisfied with the way it sits.

24 Q Okay. Thank you. Another issue that you raised

1 in your initial testimony was treatment of soil
2 and groundwater that may be contaminated with
3 PFOS or PFOA.

4 A Sure.

5 Q That category of contaminants. Is the Town
6 satisfied with the approach that has been
7 proposed by the Applicant in the soil and
8 groundwater management plans?

9 A I'm not sure yet. I've had to deal with
10 contaminants on Pease when I had the work on the
11 runway and also work on the parking. On the
12 runway and the parking ramp was identified, as
13 we have identified here, contaminants.

14 We had to go out and hire contractors with
15 large equipment for filtering equipment to come
16 in and to filter out the water and to filter out
17 the contaminants from the water and to then
18 place it back into the ground. I think that's
19 what the Applicant is trying to do, but I don't
20 know the details of it.

21 One of the things we did, too, was we also,
22 when I did this work on Pease, we also had to,
23 one of the cheaper ways to do it was to actually
24 freeze the ground, put it in place. We actually

1 got equipment from the Big Dig in Boston that
2 they were using, they would actually freeze the
3 mud and then do the work and then unfreeze, put
4 the work in place, let it set up and then the
5 mud was just allowed to thaw out around it. It
6 actually worked out quite well, but it's just
7 very expensive.

8 I'm concerned that if the water that is
9 contaminated is somehow either redirected or
10 just simply put back into the ground, I'm not
11 sure that is an acceptable thing or that it can
12 be spread throughout the ground from underground
13 sources to aboveground sources. I think Helen
14 Frink has brought that up quite clearly, and I
15 don't know if Eversource has ever done projects
16 like this or their contractors have done
17 projects like that. I'm not saying this is
18 Eversource's, it's probably the contractor who
19 we need to be more concerned about in making
20 sure it's monitored and done correctly.

21 Q Thank you, Mr. Hebert.

22 On pages 24 and 25 of your Prefiled
23 Testimony, Newington Exhibit 1, you raised
24 concerns about the Applicant's proposal to

1 relocate distribution lines out of the corridor
2 over to town roads. And in particular, you
3 complained that you hadn't received the final
4 layout of where the distribution lines were
5 going to go on town roads.

6 At this point has the Town received that
7 information from the Applicant?

8 A No. We've only received a draft of what they
9 potentially were going to do. Those lines that
10 cut through the fields of Helen Frink's property
11 are a distribution line. That distribution line
12 jumps from one end of Newington where the Frink
13 property is all the way down to Gundalow
14 landing. Everything in between is different
15 voltage.

16 What they're proposing of doing is taking
17 those lines out of those fields and putting them
18 on the roadways with taller poles. They're
19 going to be about eight to ten feet taller.
20 That's what I've been told they were going to
21 do. The issue is what impact is it going to
22 have on the scenic roads in that area.

23 Now, granted, it will improve the
24 infrastructure in the Town of Newington. That's

1 a good thing. The bad thing is that it's, what
2 is it going to do to the scenic roads and the
3 walls, you might say, in the process of doing
4 that.

5 The final thing I'm concerned about is that
6 Eversource doesn't own these poles. There's a
7 third party involved. Third party is, was
8 FairPoint, I can't remember the name of the
9 other company. It just purchased FairPoint.
10 It's owned by them. So FairPoint then needs to
11 come to the Planning Board, according to our
12 ordinances, to work with the Town on how to deal
13 with work on the scenic roads. So we're now
14 having to deal with a third party which isn't
15 here.

16 MS. DUPREY: Madam Chair, I don't think
17 this is responsive to the question, and we're
18 taking up a lot of time with really long-winded
19 answers. Can we like shorten the answers up to
20 the question?

21 PRESIDING OFFICER WEATHERSBY: I actually
22 think this is rather important. It is a little
23 off the question.

24 A I agree. I agree.

1 PRESIDING OFFICER WEATHERSBY: But I think
2 this is rather important information.

3 A Sure. I'll try to make it very quick.

4 I'm concerned that a third party is going
5 to be a part of this Project in that possibly
6 moving those lines onto the road should be
7 included as part of this Project.

8 Q Thank you, Mr. Hebert.

9 Now, the Town's position, I believe,
10 remains that the Project should be buried
11 through the rest of the Newington residential
12 and Historic Districts?

13 A Yes.

14 Q And that's 5,000 feet, more or less?

15 A It's not just the Historic District, it's the
16 residential district.

17 Q Yes. Yes.

18 A Yes.

19 Q If that were adopted as the approach here and
20 the costs of that additional change were
21 localized to New Hampshire ratepayers, would
22 that still be the Town's preference?

23 A Yes.

24 Q The MOU that was adopted between Newton and the

1 Applicant addresses the use of municipal roads,
2 but I don't see anything regarding permission to
3 install lines below or over municipal roads, in
4 particular, regarding RSA 261:160.

5 Has there been any discussion with the
6 Applicant about seeking Town approval through
7 that statutory process?

8 A Yes, there was. That was a double-edged sword.
9 If we approved them going overhead over the
10 road, it would actually undermine our position
11 to put it underground, under the road. So we
12 did not get involved. We thought it was not to
13 our best interest to say yes, it's okay to put
14 it over the road because it's contrary to what
15 we feel is proper mitigation for putting it
16 underground. That was the whole purpose of us
17 not getting involved with it. We were asked.

18 Q You were asked.

19 A Yes.

20 Q But you chose not to.

21 A Yes.

22 Q Okay. Thank you. Now, we heard some testimony
23 earlier about the Town's preference for the
24 Gosling Road Autotransformer Solution. And in

1 your Prefiled Testimony, Newington Exhibit 1,
2 page 19, lines 7 to 13, you talk about why you
3 think that that is a less impactful solution.
4 Do you recall that testimony?

5 A I do. I don't have it in front of me, but I do.

6 Q I think what I'm trying to understand is you've
7 said it's a less impactful, but it seems that
8 the Town's interest is primarily with the Town,
9 and so clearly the Gosling Road Autotransformer
10 Solution would have a smaller impact on
11 Newington. But would it, is your testimony that
12 it would have a smaller impact overall?

13 A Yes. I think the impact on Newington would be
14 great since we're going from a distribution,
15 small distribution lines in them as compared to
16 the alternative route which was going to have to
17 go back to Madbury, goes through a high voltage
18 transmission line right-of-way with high voltage
19 transmission lines already in them.

20 In other words, if you look at the
21 Merrimack Valley process, they had a small line,
22 they were adding to it. 115 volt line. But
23 there was already 600 feet or 500 feet wide of
24 right-of-ways, and if you look at the people who

1 attended that meeting, it was only one or two
2 people who didn't want to have that happen. The
3 impact was going to be significantly less. In
4 other words, the damage is already done on the
5 route that was proposed to go the other way for
6 the substation. Gosling Road substation,
7 Autotransformer, versus the impact a small
8 distribution line would have on the Town of
9 Newington and Durham because there's no high
10 voltage transmission lines already in them.

11 Q All right. Thank you very much. I have no
12 further questions. Thank you.

13 PRESIDING OFFICER WEATHERSBY: Attorney
14 Needleman?

15 **CROSS-EXAMINATION**

16 **BY MR. NEEDLEMAN:**

17 Q Hello, Mr. Hebert. How are you?

18 A Good morning.

19 Q I think as you know, I'm Barry Needleman, and I
20 represent the Applicant in this matter.

21 I wanted to start by following up with a
22 couple of things that you said to some of the
23 other people who were asking questions earlier.

24 Mr. Patch was asking you, and at one point

1 you said quote, "I believe there is enough power
2 in the region," close quote.

3 A I do.

4 Q So you think ISO got that wrong?

5 A No. I think the solution is wrong.

6 Q But the solution is partly predicated on
7 increasing the power in the region. So you
8 actually agree that's necessary.

9 A No. I said I think there's enough power in the
10 region, and I think that the solution that is
11 being chosen is incorrect.

12 Q You also in response to questions that Mr. Patch
13 was asking you at one point said with respect to
14 Gosling Road, let's build the 400 megawatt
15 solution now because we might need it at some
16 point in the future. The Autotransformer.

17 You were here when both Mr. Andrew and Mr.
18 Bowes testified; is that correct?

19 A Yes.

20 Q And did you hear them say that in the ISO
21 process they don't do things that way. They
22 don't overbuild. They build for the solution
23 they need at this point. Do you remember that?

24 A I do remember that. I am aware that there's a

1 ten-year lookout for the future, and I think
2 that is very limited and is probably a model
3 that is used for the entire state and probably
4 the region, and some parts of the states it
5 works very well, but for this part of the state
6 where it's continuously growing, the issue is is
7 that it doesn't look out far enough.

8 And I understand you don't want to
9 overbuild in the region, but the history has
10 shown that the Portsmouth area and the Seacoast
11 area is growing consistently when others are
12 not.

13 Q So it sounds like what you are saying is in this
14 case ISO should ignore their normal practices.

15 A I think that ISO needs to look at the practice
16 for the Seacoast region and make an exception.
17 It shouldn't be a hard rule.

18 Q Do you also recall when Mr. Andrew was
19 testifying that the purpose of the Project was
20 not just to increase power flow in the region,
21 but it was also to address technical problems
22 like voltage concerns?

23 A Yes, I do remember that.

24 Q And do you disagree that the Project will

1 actually address the technical issues that
2 Mr. Andrew talked about?

3 A I can't say I disagree with him because I don't
4 know those technical issues. He mentioned them,
5 but I don't know what those technical issues
6 are, other than temperature related to the lines
7 overheating because of power demand for the
8 Seacoast region.

9 Q A moment ago when Mr. Aslin was questioning you,
10 you were talking about moving the distribution
11 lines. Am I correct that everything having to
12 do with the movement of the distribution lines
13 and the relocations on town roads is going to be
14 permitted at the local level in Newington?

15 A As far as I know, that's what is, what a draft
16 copy of a drawing was presented to the Town.
17 Yes.

18 Q In fact, Eversource has already met with the
19 Newington Planning Board about that process;
20 isn't that correct?

21 A They talked to us about the, I know they talked
22 to me specifically, and I think they talked to
23 the Planning Board, I think you're correct,
24 about doing that. And that they would like us

1 to look at the existing plan and that they would
2 be coming back to us to talk about what they
3 were going to be doing because there was not a
4 final draft, and that happened about two years
5 ago, if I remember right, maybe longer.

6 Q Let me take you to Applicant's Exhibit 217.
7 Dawn, if we could pull that. I think we started
8 to talk about this earlier.

9 This is a summary of the outreach history
10 in Newington, and I believe you mentioned that
11 Eversource first met with you and Newington in
12 late 2013; is that correct?

13 A That's about right, yes.

14 Q And I think this says December 20th of that
15 year. Is that about right?

16 A That's about right.

17 Q And after that point, the Applicant met on
18 numerous occasions with you and/or the Town
19 regarding the Project in 2014 and 2015. Would
20 you agree with that?

21 A Yes. They met with us twice in 2014 according
22 to this and many times in 2015.

23 Q Prior to filing the Application in April of
24 2016, the Outreach Summary indicates that the

1 Applicant met with the Town 18 times. Would you
2 disagree with that?

3 A I don't have a track of this so I assume you're
4 correct.

5 Q In addition to meetings, is it fair to say that
6 you probably had many phone calls with
7 Eversource, people like Sandra Gagnon, probably
8 a lot of emails about the Project?

9 A Yes.

10 Q Okay. And so as a result of those meetings, the
11 emails, the phone calls, the interactions, there
12 were changes that were made to the Project prior
13 to the time it was filed; is that correct?

14 A That is correct.

15 Q And I want to take you to Applicant's Exhibit
16 140, Attachment A. And I want to go to page 6
17 if we could, Dawn.

18 Very bottom of page 5, the heading is
19 Newington Prefiling Outreach, and then we go
20 over to page 6, and we've got those four bullets
21 in the middle of the page. Do you see those?

22 A I need a magnifying glass to see. All right.
23 Here we go.

24 Q That's a summary, I believe, of the changes that

1 were made as a result of the interactions with
2 the Town prior to the time the Project was
3 filed; is that correct?

4 A I think these were, I think these were proposals
5 because they're not completed at this point. Am
6 I correct?

7 Q I believe that those are intended to summarize
8 changes that were actually made to the Project
9 before the Application was even filed. Would
10 you agree with that?

11 A Yes. I do know there was a draft plan presented
12 to the Planning Board and to myself prior to the
13 Applicant filing, correct.

14 Q And prior to the time the Application was filed
15 in April of 2016, discussions had already
16 started with the Town and the Frinks about at
17 least the possibility of doing something more
18 around the Frink Farm and the Hannah Lane area;
19 is that right?

20 A That is correct.

21 Q And in the paragraph right below those bullets,
22 it indicates that Eversource at the time they
23 filed the Application gave a commitment letter
24 to the Town that they would continue to work

1 with you on those issues; do you remember that?

2 A Yes. I do remember that. I would like to say
3 one caveat to that. It was always with the
4 understanding that we were working
5 collaboratively which I thought was a really
6 good thing to do, and that's what we've always
7 found to do. We've had other Projects in the
8 past. And that working collaboratively with
9 potential proposals such as this is better for
10 the Town and everybody concerned. But the one
11 thing we've already said is that we wanted it
12 underground through, actually rerouted outside
13 of the residential area or to put it underground
14 through the residential area, and we preferred
15 to have it outside the residential area as we
16 did with the gas line that was proposed to go
17 down this very easement several years earlier
18 that they did put it out onto Pease on Arboretum
19 Drive which we asked you to do and you did look
20 at many iterations for that.

21 Q Sure. I mean, essentially I think what you're
22 saying is both sides had different views of
23 aspects of this. But we sort of worked our best
24 to find as much common ground as we could.

1 A Absolutely. Yes.

2 Q So after the Application was filed, we continued
3 to work with the Town to make changes. Is that
4 right?

5 A Yes. That's true.

6 Q So I want to look at that now. Let's go to the
7 bottom of page 6. There were, I think, four
8 different areas in particular that concerned the
9 Town. Is that right? There was the Flynn Pit,
10 there was the Frink Farm, there were the
11 transition stations and there was undergrounding
12 around Gundalow Landing; is that about right?

13 A Correct.

14 Q So let me start with the Flynn Pit area. I'm at
15 the bottom of page 6. This is Exhibit 140,
16 Attachment A, which is on the screen.

17 And with respect to the Flynn Pit, the
18 issue there was when the Project came out of
19 Little Bay and through the Gundalow Landing area
20 and across the road, Eversource originally
21 proposed to bring it aboveground right next to
22 the road essentially; is that right?

23 A You proposed with three transition towers there
24 right by the road. That's correct.

1 Q And Newington did not like that and asked
2 Eversource to consider a different approach; is
3 that correct?

4 A I think it was a mutual agreement that there was
5 a win for you and the win for us, and the win
6 for you is right there at the Flynn Pit was a
7 vernal pool that was presently in the
8 right-of-way, and that the only way you were
9 going to get across that vernal pool was to
10 disturb it pretty substantially by putting in
11 timbers across it. It basically would have
12 destroyed that vernal pool.

13 So looking at this and trying to work
14 collaboratively again, I suggested that you put
15 the transition poles, at the time there was
16 three, past the vernal pool which is back I
17 think about four or 500 feet, if I remember
18 right. I think that's what you agreed to do.
19 And there was a land transition there was
20 occurring that the vernal pool would be
21 protected and that the land that was there next
22 to the vernal pool was going to be given to the
23 Applicant to put underground to be able to get
24 back to instead of going through the vernal pool

1 and destroying it. So I think there was a
2 win-win for everybody.

3 Q So let me summarize quickly. The Town gave us
4 an option to locate on this town land referred
5 to as the Flynn Pit back and away from the road,
6 Eversource reengineered the project to locate
7 there, and the Town was content with that piece
8 of it.

9 A We didn't like the transition pole. We still
10 wanted it underground through the right-of-way,
11 but everything else you said was correct.

12 Q Okay. I'm going to come to that transition pole
13 in a minute.

14 A Okay.

15 Q So actually let's talk about that now because
16 that's the next piece in the middle of page 7 of
17 this exhibit. So once the Applicant agreed to
18 move the Project to the Flynn Pit, the Town
19 still had a concern about the proposed
20 transition structure there; is that right?

21 A That's correct.

22 Q I think Eversource wanted to use a three-pole
23 structure that was about 65 feet high and the
24 Town wanted a monopole; is that right?

1 A There seemed to be other technologies that was
2 out there that was shown that was being used
3 elsewhere, and it seemed to make sense and had
4 less impact, and I think it was less costly for
5 you to go to a single pole as well.

6 Q So you agree with me that Eversource
7 reengineered that transition structure to a
8 monopole, made it about 70 feet high and the
9 Town was content with that.

10 A Yes. You had to go about ten feet higher than
11 what was on the original three poles, but the
12 fact that there was some pretty high trees in
13 that area and that the only way you're going to
14 be able to view it was right there from Little
15 Bay Road and that the impact to Little Bay Road
16 was going to be greatly diminished by setting it
17 back four to 500 feet and going to a single
18 pole. That's correct.

19 Q I think that we agreed that the original design
20 was 65 feet high and the modified design was 70
21 feet.

22 A That's about right.

23 Q And then that was submitted, and that's now part
24 of the proposal as well; is that correct?

1 A Yes. That's correct.

2 Q Then the next item down on this set of
3 additional changes relates to underground in the
4 Historic District, and we've heard a fair bit
5 about that. I just wanted to touch on a few
6 points.

7 After the Application was filed in April of
8 2016, the Applicant worked with the Town and, in
9 particular, with the Frink family and people on
10 Hannah Lane to acquire the rights that would be
11 necessary to add about 26 or 2700 feet of
12 underground through the Newington Historic
13 District; is that correct?

14 A That is correct.

15 Q And at the time this was something that was
16 important to the Town; is that fair to say?

17 A Yes.

18 Q And as part of that process, is it your
19 understanding that there was actually a
20 conservation easement on the Frink Farm that
21 interfered a little bit about this issue?

22 A Yes. There was an agricultural conservation
23 easement, I believe, and it was recognized that,
24 yes, you had to go to Conservation Law

1 Foundation, I think.

2 Q Let me try to help you.

3 A Thank you.

4 Q It was the Natural Resource Conservation Service
5 which is part of the US Department of
6 Agriculture. Does that sound right?

7 A Yes, that's right.

8 Q And we also needed to get approval from the
9 Rockingham County Conservation District; is that
10 correct?

11 A That is correct.

12 Q And we were able to work with the Frinks and the
13 Town and both of those entities and get those
14 necessary approvals; is that right?

15 A Yes.

16 Q And Applicant's Exhibit 218 which we don't need
17 to go to, but for the record, is that amended
18 conservation easement deed which the Town also
19 signed; is that right?

20 A We signed an agreement. I'm not sure what
21 Applicant's 218 is. I haven't seen it.

22 Q And this change in underground was really a
23 direct response to feedback from the Town; is
24 that right?

1 A I think it's a direct response to feedback from
2 the Frinks more than anybody, but the Town had a
3 \$450,000 stake in putting that land into that
4 current easement.

5 Q Fair enough. And as we've heard, if the Project
6 is built as proposed, that distribution line
7 will also come out of the field; is that right?

8 A That is correct.

9 Q And I think I asked Counsel for the Public's
10 visual expert at the Technical Session that if
11 that distribution line were removed, would this
12 actually improve the aesthetics in the area, and
13 I think he said it would. Do you agree with
14 that?

15 A When we met with Dana yesterday who is counsel
16 for Eversource, when we met with him during one
17 of our meetings for the MOU for the mitigation,
18 on the 106 process, it wasn't a complete hundred
19 percent going one way because what you're doing
20 is taking those poles that were in that
21 right-of-way, putting them out on the street
22 which is still in the Historic District and
23 going down Fox Point Road and then going down
24 Nimble Hill Road, if you're familiar with those

1 two roads, with higher poles. And it was also
2 going to basically still have an impact because
3 there is going to be some construction that
4 needs to be done to install those poles, and
5 there's going to be some disruptions that are
6 going to be occurring because, to install those
7 poles.

8 So everyone agreed at that meeting that
9 that was not a hundred percent or a -- what's
10 the word I want. There's still some impact
11 because we're putting in taller poles through
12 the Historic District.

13 Q Understood. But subject to that, you'd still
14 agree that there's a net visual impact in that
15 area by removing the distribution lines?

16 A Frink Farm fields definitely look better.

17 Q And there are other benefits to the Frink Farm
18 as well which I wanted to ask you about.

19 Applicant's Exhibit 169 is the Memorandum
20 of Agreement with the Frink family. This
21 agreement, I think you're aware, involves a
22 donation to a stewardship fund and it involves
23 contracts with the soil monitoring for the work
24 and so forth. Are you familiar with that?

1 A I'm really not. I've heard of it from Helen,
2 but I am not familiar with the details.

3 Q All right. I'm going to skip questions then on
4 that and I'll save those for her.

5 Let me ask you about Application's Exhibit
6 219 which is the MOU with the Rockingham County
7 Conservation District. Were you aware that this
8 MOU adopts the soil and groundwater management
9 plans that the Applicant has proposed?

10 A I am not aware of the details or the content of
11 it, but I understand that that is true.

12 Q You expressed some concerns a few minutes ago
13 with Mr. Aslin about contamination management.
14 Have you had any opportunity to look at the soil
15 and groundwater management plans that have been
16 proposed to deal with that issue?

17 A No. I have not. I said it was a concern.

18 Q Okay. Let me come back to that then at the end.

19 And then with respect to the transition
20 structure that we've heard about at the Frink
21 Farm, the Application was amended in 2017 to
22 account for this additional underground work; is
23 that right?

24 A I believe that's true. The days I'm not sure

1 about.

2 Q And still one of the issues that remained at
3 that point, I think certainly for the Frink
4 family and also for the Town, was what would
5 that transition structure look like. Do you
6 remember that?

7 A Correct.

8 Q And I think that --

9 A Yes. I'm sorry. Yes.

10 Q And the Town and Frinks, I believe, were
11 concerned about it being a three-pole structure
12 and were more interested in it being a monopole
13 structure; does that sound right?

14 A That's correct. I think it was the same time
15 they did monopole structure for the Flynn Pit,
16 you did the same thing here for the Frink Farm.

17 Q And it is proposed now as a monopole; is that
18 right?

19 A That is correct.

20 Q So having in mind all these things that we just
21 ran through, is it fair to say that Eversource
22 worked diligently and in good faith with the
23 Town to try to understand and address as many of
24 its concerns as we could?

1 A Yes, but always with the thing you've got to
2 keep in mind is we want it underground. That
3 was our final -- and we've always been working
4 with that, and yet we went as far as we could go
5 to try to, you had your side of you didn't want
6 to put it underground. We did. And we assume
7 that we were still against putting it overhead.
8 We said let's get the best deal we can get that
9 you're willing to step up to the plate to do at
10 the time, and we worked collaboratively on the
11 things that we could, and I think we showed good
12 faith on both sides to try to do that.

13 Q Gundalow Landing is one of the places where
14 there's some additional underground; is that
15 right?

16 A That's correct.

17 Q Am I correct that with respect to the
18 residential areas of Newington something like 45
19 percent or so of the Project is actually
20 underground? Have you done that kind of
21 calculation?

22 A I think that's pretty close.

23 Q Okay. The bottom of page 7 deals with the
24 changes at Gundalow Landing. Let me ask you

1 about those quickly. It's Exhibit 140,
2 Attachment A, PDF page 21.

3 Originally, the proposal had been for us to
4 go underground through the town roads; is that
5 right?

6 A That's correct.

7 Q And the Town is also concerned about that
8 approach; is that correct?

9 A We were concerned about the way it was being
10 proposed, it was going to completely, we had to
11 look at the design, but it was going to at some
12 point going to completely go from one side of
13 the road over to the other side of the road and
14 cross it several times in the road, and we were
15 concerned about the orderly development of that
16 particular road for future utilities,
17 underground utilities such as gas or sewer or
18 anything that would come down the road. So we
19 were concerned about that.

20 We were also concerned that the road was
21 just recently rebuilt because it was built on
22 clay from many years ago, and we were concerned
23 about the impact that the MOU addresses, I think
24 now correctly.

1 Q Am I correct then that in response to that
2 concern Eversource spent roughly ten months
3 working with folks in the Gundalow neighborhood
4 to acquire additional rights so we could get as
5 much of the line off the town roads as possible?

6 A I would like to answer that question, and I
7 don't know if you're going to like to hear this.

8 You started in, I can't remember the, it
9 was ten months. You started with the proposals,
10 dropped it off to people through your
11 contractor, not Eversource, it was a contractor
12 that was dealing with the Applicants.

13 They received it and then the answer, the
14 question was we need it right away. And then it
15 disappeared, and it went several months before
16 all of a sudden it became an issue again, and
17 they wanted to have it done, wrapped up very
18 quickly. So people were sitting there looking
19 at this, what's going to happen. It was six
20 months, I would say, in between the initial
21 contact and the final contact when all of a
22 sudden you needed to get it done just before the
23 Application was filed.

24 Q Let me ask it this way. Let me satisfy any

1 unhappiness you might have --

2 A It wasn't me. It was the homeowners.

3 Q Well, okay. Any unhappiness anyone might have
4 with the actual process. The endpoint was
5 successful in the sense that we addressed the
6 Town's concerns and moved it off the road by
7 acquiring additional rights; is that fair to
8 say?

9 A Yes, and one of the others things that it did do
10 is that you had a hundred foot right-of-way that
11 you weren't going down because you didn't have
12 the underground rights to go across that
13 property. And so it was a win for you and a win
14 for the property owners where it went from a
15 hundred foot easement across their property to a
16 25-foot easement across their property, and they
17 gained back 75 feet of easement that was not
18 buildable or that they could do anything with.
19 And by doing that, it was a swap with the
20 landowners to gain back 75 feet of the
21 right-of-way and give Eversource 25 feet on
22 their property, and we also included the road as
23 part of the easement that you could use, put
24 your construction vehicles on to put the

1 underground portion on that 25 foot on private
2 property.

3 So it was a win for you, it was a win for
4 them, and it was a win for the Town, and that
5 was all basically worked out with all of us
6 sitting at the table and working these issues
7 out, and it was actually a very positive thing
8 to happen and to be able to work out those kinds
9 of details. I really liked that cooperative
10 working together.

11 Q Thank you for that.

12 I'm going to make a reference to your
13 Prefiled Testimony. You don't need to go to it
14 unless you feel it's necessary. On page 13,
15 starting about line 17, you raised a concern
16 about impacts in an open field near the Frizzell
17 property. Do you remember that?

18 A I think that's true. Yes.

19 Q So I'm only raising that because I want to go
20 back to the Outreach exhibit and ask you about
21 that. I'm going to look at page 13 which is PDF
22 page 27. And Dawn has pulled that up for you.

23 That highlighted section regarding the Fox
24 Point property owner, this is the Frizzells; is

1 that right?

2 A I think it is. Yes.

3 Q And so Eversource did do some redesign there to
4 move a structure to increase the spans to try to
5 some extent to address that problem there. Is
6 that fair to say?

7 A Again, they tried to mitigate it. The Frizzells
8 would still like, and the Town would still like
9 to have it underground there, that's correct.

10 Q And are you aware that the Applicants are
11 continuing to work with the Frizzells on a
12 planting plan for that area?

13 A I am not.

14 Q Let me turn to the MOU. That's an exhibit to
15 your Supplemental Prefiled Testimony, and again,
16 no need to jump to this unless you want to, but
17 on page 3, line 4, of your testimony you
18 indicated that the Town and the Applicant
19 entered into the MOU and that the Board approved
20 it on February 5th, 2018; is that right?

21 A Yes. I believe that's the Board of Selectmen.

22 Q Right.

23 A Yes.

24 Q There was an addendum to that MOU approved on

1 July 12th, 2018, which related to blasting; is
2 that right?

3 A I guess subject to check the date, I think
4 that's correct.

5 Q And these were primarily intended to address the
6 Town concerns that would relate to construction
7 projects; is that correct?

8 A That's correct.

9 Q And they speak for themselves so I'm not going
10 to go through all of them, but again, I think
11 you may have said earlier that they're the
12 product of pretty lengthy discussions between
13 the two parties, fair to say?

14 A That's true.

15 Q And am I correct that with respect to these
16 construction-related issues that are
17 memorialized in both of the MOUs, the Town is
18 now satisfied with those issues?

19 A Yes.

20 Q So if the Town is satisfied with those issues,
21 is it also fair to say that all of the issues
22 identified in your Prefiled Testimony that
23 related to public health and safety have now
24 been addressed?

1 A I don't know honestly if they've all been
2 addressed. Honestly. I don't know. I think
3 they have. I'm not positive.

4 Q All right. Fair enough. Let me switch to a
5 different topic.

6 Again, I'm looking at Exhibit 2 which is
7 your Supplemental Prefiled Testimony. You may
8 want to go to this at this point because I do
9 have some questions about it. So it's Newington
10 Exhibit 2, and I'm at page 7, line 7. And here
11 you cite to certain sections of the Town's
12 master plan including a provision prohibiting
13 aboveground electric transmission lines in
14 residential districts. Do you remember this
15 portion of your testimony?

16 A Yes.

17 Q And we heard you talk a little bit about this
18 earlier on so I want to ask you some additional
19 questions about this. Let me first pull up
20 Applicant's Exhibit 199. This is a copy of the
21 master plan that was in effect prior to the time
22 it was amended in February 2015 which you
23 mentioned earlier; is that correct?

24 A I don't know. I can't see page 25 and page 26.

1 Q I actually do want to pull those up. We heard
2 Mr. Varney testify earlier that he obtained this
3 plan from the Town. Were you here when he
4 testified?

5 A I was.

6 Q And let's pull up page 25, if we could. This is
7 the utility easement section of that version of
8 the plan. Does that look familiar to you?

9 A Yes. That's the 2010 version.

10 Q Okay. Thank you. And that first highlighted
11 piece from the 2010 version says that while
12 planning for future land development, easement
13 restrictions obviously should be taken into
14 account; is that correct?

15 A That's what it says.

16 Q And it's the utility easement section so it must
17 be speaking about utility easement restrictions,
18 fair to say?

19 A Yes.

20 Q And then at the bottom of the page in the last
21 paragraph we can see there, it talks about PSNH
22 lines, and it makes reference to a 34.5 kV line;
23 is that right?

24 A That's correct.

1 Q And that would be the same line that we're
2 talking about with respect to this project, the
3 same corridor; is that right?

4 A Yes.

5 Q And it specifically recognizes that with respect
6 to that corridor, there is a 100-foot wide
7 easement; is that right?

8 A That is correct.

9 Q So earlier we saw that the first time that
10 Eversource came to meet with the Town and with
11 you was on December 20th, 2013. Is that
12 correct?

13 A Yes.

14 Q So at the time that Eversource had that first
15 meeting with you, what we are looking at here
16 would have been the master plan provisions that
17 were in effect on that date; is that right?

18 A That's correct.

19 Q And at that time, when Eversource was looking at
20 the master plan for the Town of Newington, it
21 would have seen the plan saying that easement
22 restrictions need to be taken into account; is
23 that correct?

24 A That's correct.

1 Q And it would have seen that there is nothing in
2 the utility easement section of this version of
3 the master plan that talks about undergrounding
4 in residential areas; is that right?

5 A I think there's an prohibition of power lines
6 through the residential area that was in that
7 master plan and still is.

8 Q But that wasn't my question. There's nothing in
9 the utility easement section about
10 undergrounding of transmission lines; is that
11 right?

12 A That's correct.

13 Q So now I want to go to the exhibit that you
14 attached to your Prefiled Testimony which is
15 1-4. It's the revised Newington master plan
16 from 2015. And again, the utility easement
17 section which has now been updated, and I take
18 it that that's familiar to you?

19 A Yes.

20 Q And I think we've heard you say several times
21 that this was, this update was adopted in
22 February of 2015. Is that right?

23 A That's correct.

24 Q So the update was adopted 15 months after

1 Eversource first came to you and started talking
2 to you about the Project; is that right?

3 A That is correct.

4 Q And in this update at the bottom of the -- let's
5 zoom into this if we could, Dawn.

6 At the very bottom we see the language that
7 was quoted in your Prefiled Testimony about
8 under no circumstances should these transmission
9 lines be put in the residential district. Is
10 that right?

11 A It says that, yes.

12 Q And then if we can go to the middle paragraph of
13 this, Dawn? And in this middle paragraph, this
14 paragraph seems to actually be speaking
15 specifically about this proposed project; is
16 that fair to say?

17 A It is.

18 Q Okay. And so am I correct then that in February
19 of 2015 when the Town made these changes that
20 we're looking at, the changes were actually made
21 specifically for the purpose of addressing this
22 Project?

23 A Yes. I would like to address that.

24 Q Well, you'll get an opportunity. I want to keep

1 going on this topic. I'm quite certain that
2 you'll have the chance on redirect.

3 A Thank you.

4 Q So continuing on, let me go back to your
5 Prefiled Testimony then at page 7. Or actually
6 let's not, Dawn. Stay with this and just go up
7 to the top paragraph.

8 So in your Prefiled Testimony, you make
9 reference to a line in this paragraph. Let's
10 just look at the line. It's about the fourth
11 one down where it says electric transmission
12 lines are generally viewed as uses incompatible
13 with residential uses. Do you see that?

14 A Yes.

15 Q Now, that wasn't in the prior version of the
16 plan that we looked at few minutes ago, right?

17 A I don't remember. I think it probably is not.

18 Q It's not. I can -- I'm happy to go back.

19 A Subject to check. All right. That's good.

20 Q I certainly didn't see it.

21 So we were interested because this is also
22 something that was added in February of 2015,
23 and I asked you at the Technical Session about
24 what basis the Town had for including a

1 statement like that, and my recollection is that
2 you couldn't tell me at the time. And so if you
3 remember, we made a Data Request asking you to
4 be specific about what the basis was. Do you
5 recall that?

6 A I think there was a Data Request to that.

7 Q And I want to pull that up. It's Applicant's
8 Exhibit 221, and this was Data Request 5 C. And
9 the question was tell us what the basis was,
10 what document studies, what was it that the Town
11 was relying on to actually make that statement.
12 And this was I believe your response. Do you
13 recall that?

14 A Yes.

15 Q And you pointed to this Loughlin Land Use
16 Practice, Planning & Zoning citation, and you
17 gave us this citation. There's actually nothing
18 anywhere in that citation that says anything
19 about transmission lines, is there?

20 A I'm not, I can't see where you're, citation that
21 you're talking about.

22 Q It's at the bottom of that page. It's that big
23 paragraph.

24 A Okay.

1 Q And that's what you provided to us to answer
2 this question.

3 A The citation is from the RSAs, I believe. Let
4 me finish reading it.

5 Q Sure. Sure.

6 A Yes. That is from the RSAs and let me go ahead
7 and quote it.

8 Q Let me pause for a minute because right above it
9 I think it's citing to where it came from which
10 is not the RSA. I think -- this is your
11 response so that's all I have to go on, but it
12 cites to a land use practice document, not to an
13 RSA.

14 A I believe it's the RSA. I would like to be able
15 to pull it out to check if you would give me a
16 minute.

17 Q Sure.

18 A Yes. This is the RSA.

19 Q Does the RSA say anything about transmission
20 lines?

21 A No. I think it's the RSA that leaves it to up
22 the local community and its elected officials
23 which I am to basically develop a master plan to
24 develop land in the Town in the orderly fashion,

1 and we have always looked at distribution lines
2 as needed for the residential use, but a
3 transmission line is not something that is
4 needed for the residential district. We are
5 very friendly, we are very friendly towards
6 utilities and transmission lines in our Town. I
7 think you will find out that if you, when you
8 did the tour of the Town, you'll find out there
9 was no transmission lines going through the
10 residential district, but there are many, many
11 transmission lines going to our other districts
12 which are industrial. We planned things out
13 very carefully.

14 Q So let me go back to my question if you would.

15 MR. FITZGERALD: Excuse me, if I could. If
16 I could just clarify. Because it appears that
17 there is a citation here to this Loughlin
18 document, page 76. Are you saying that this is
19 the wrong citation, and that that's actually,
20 that you provided the wrong citation for this
21 quotation or that's actually from the state RSA?

22 A This is from the state RSA. We did read what
23 the state RSA states, and I think we stated
24 674:2. So if I've got it incorrectly, then I

1 guess we need to check that and I may be
2 incorrect.

3 MR. RATIGAN: Ms. Chairman? I'll represent
4 for the benefit of the Board, it's in both.
5 Attorney Loughlin in his volume takes the
6 statute and quotes it in his book so it's in
7 both. It's the statute and also in his volume.

8 MR. FITZGERALD: Thank you.

9 PRESIDING OFFICER WEATHERSBY: Thank you,
10 Attorney Ratigan.

11 A I was always familiar -- from. I didn't
12 understand what the book said so I apologize.

13 Q That's okay. We veered off a little bit. Let
14 me try to bring you back.

15 A Okay.

16 Q If you look at the question at the top, the
17 reason we asked this was we were trying to
18 understand what basis the Town had for making
19 that statement that transmission lines are
20 viewed as incompatible with residential uses.
21 So we asked you to tell us what you were relying
22 on, and this is what you told us. You gave us
23 this statement which was in Loughlin and in the
24 RSAs, but the statement actually doesn't say

1 transmission lines are incompatible with
2 residential uses. It doesn't even mention
3 transmission lines, does it? Is that fair?

4 A If you look at our ordinances, I think if you
5 look at this state statute, it doesn't say
6 anything about any of the uses in any of our
7 zones. It's up to the local Planning Board and
8 officials that have been elected by the people
9 to look at what's best for the residential
10 people of that Town. And that's exactly what
11 would we've done with the RSAs and with our
12 ordinances.

13 Q Is it fair to say, aside from this quote that
14 you gave to us, you didn't provide us with any
15 other document studies or anything to support
16 that statement?

17 MS. GEIGER: I'm going to object, please.
18 It seems to me that the Applicant has had this
19 response to the Data Request in hand for a long
20 time, and if he felt it was unresponsive or
21 improper, the remedy for that obviously is to
22 speak informally with the Respondent, and if
23 what we say is insufficient, then a Motion to
24 Compel could have been filed with this

1 Committee. So to argue with this witness about
2 this answer to this Data Request I believe is
3 improper.

4 MR. NEEDLEMAN: I agree. I'm not arguing
5 about the response, and I don't think that
6 there's anything missing here. Quite the
7 contrary. I'm trying to establish that but for
8 this one quotation, there is nothing else that
9 the Town has to rely upon when it inserted this
10 provision into the master plan, and I think we
11 all now agree that's the case.

12 MS. GEIGER: I will deal with this issue on
13 redirect, but I believe that the witness has
14 provided testimony in his Prefiled Testimony
15 that speaks to another section of the master
16 plan dealing with future land uses that
17 addresses this issue so we'll deal with it on
18 redirect. Thank you.

19 PRESIDING OFFICER WEATHERSBY: So we'll
20 overrule the objection, and you may continue.

21 Q So let's crystallize this with one more
22 question. We asked you what the Town relied
23 upon, and this is what you provided to us, and
24 this is all you provided to us. Is that fair to

1 say?

2 A That's what was provided to you.

3 Q Okay. Am I correct then --

4 A I would like to say there were other questions
5 other than this one question that you asked us
6 about. This seems to me, if I remember
7 correctly, it was on the future land use which
8 addressed the issue. And on a future land use
9 it says --

10 Q Well, Mr. Hebert --

11 A I would like to be able to answer the question
12 if you would let me.

13 Q Well, there's not a question pending. So let
14 me --

15 A I'm trying to clarify my answer.

16 PRESIDING OFFICER WEATHERSBY: So there's
17 not a question pending.

18 A Okay.

19 PRESIDING OFFICER WEATHERSBY: And I bet
20 you'll have a chance to do that on redirect.

21 A I bet I will, too.

22 Q So there's no place in any of the testimony you
23 filed, your initial testimony or your
24 Supplemental Testimony, where you mentioned that

1 the utility easement section of the master plan
2 had been changed after the Project was announced
3 to you to address the Project specifically; is
4 that right?

5 A That is correct, and I think I know where you're
6 going with this, but go ahead.

7 Q Well, you probably do and I'm going to ask you.
8 I'm curious as to why. Don't you think that if
9 the purpose of your testimony is to try to give
10 the Committee a complete picture of this
11 planning process, don't you think it would have
12 been helpful for them to know what they know
13 now, that you changed the plan specifically to
14 address the Project?

15 A I think we changed the plan to reinforce what
16 was already in the rest of the master plan. If
17 you look at all of our development policies and
18 you look at our future land use and you look at
19 what is core and central to the master plan, you
20 will see that this is consistent with the rest
21 of the master plan and the residential district.

22 Q When Eversource came to you in December of 2013
23 initially to have this discussion, is it fair to
24 say that the 2010 version of the master plan

1 would have been what they were looking at and
2 relying upon as they began planning this
3 Project?

4 A I think you probably should have been looking at
5 it, this was over a five-year period. Almost
6 five years to the day.

7 Q I'm talking about December of 2013 now.

8 A I understand that. The Application didn't go
9 until what, 2017 or '16, what was the date?

10 Q It went in April 2016, but I'm focused on when
11 they began talking to you about the Project --

12 A I understand that. I understand that. I have
13 to look at all of our ordinances and things that
14 we put in place, and we do that in a timely
15 manner and things are grandfathered based on
16 when an Applicant is, a formal Applicant is
17 actually submitted. There was no formal
18 Application to, at this particular time, and we
19 had no idea when you were going to be going
20 ahead and even if you were going to apply.

21 The Town does not stop working simply
22 because a potential Applicant is coming in
23 before the Town. We have changed ordinances
24 since you've been -- it's been five years.

1 We've changed several ordinances in our town to
2 address other issues that we needed to address,
3 both driven to us by the state, the RSAs, the
4 whole gambit. We just don't stop because
5 someone potentially is going to be coming before
6 us and asking us to do something.

7 Q Do you think it's reasonable for developers to
8 be able to look at official town planning
9 documents and rely upon them when they're trying
10 to plan a project?

11 A Absolutely.

12 Q And you think it's reasonable for them to expect
13 that those documents wouldn't be changed to
14 specifically target and make their particular
15 Project more difficult?

16 A I think I know what the law says about that,
17 that the Town has a right to be able to change
18 the RSAs and the, not, excuse me, not the RSAs,
19 the town ordinances and the master plan. The
20 master plan is a living document. It never
21 dies. It just constantly -- we do an amendment,
22 in fact, we're looking at doing amendments right
23 now updating the master plan.

24 Q Exhibit 1, your Prefiled Testimony, at page 2 to

1 25, you discuss aesthetics there. And at the
2 Technical Session I asked you about whether the
3 Town is satisfied with the underground portion
4 of the Project as it relates to aesthetic
5 effects, and I think you said yes you were.

6 A I don't remember that answer, but there is one
7 part that I know we're not happy with.

8 Q And that is the distribution line piece?

9 A No. That would be the pole sitting on the Frink
10 Farm which is on the National Historic Register
11 and the impacts looking across the field from
12 that, looking at that pole.

13 Q Okay. And then with respect to the aboveground
14 portions of the Project, am I correct that the
15 Town didn't do any sort of formal aesthetics
16 analysis; is that right?

17 A I think you're correct.

18 Q And I also asked you about these aboveground
19 portions as they relate to aesthetics at the
20 Technical Session, and I think what you said to
21 me was it's the Town's position that the
22 aboveground visual impacts are unreasonable if
23 any of the overhead structures or any portions
24 of those structures are visible; is that right?

1 A I believe that's correct.

2 Q Let me ask you about historic resources. In
3 your Prefiled Testimony at page 27, line 11, you
4 said that the Applicant has not provided a
5 complete list of the impacted historical
6 properties. Do you recall that?

7 A I do recall that. Again, subject to check, I
8 think you're correct.

9 Q I asked you about this at the Technical Session
10 and that also resulted in a Data Request to try
11 to clarify this point and so Applicant's Exhibit
12 223 is your response to that Data Request. Can
13 we pull that up?

14 I think what we were really getting at is
15 we were trying to understand at that point in
16 the process whether the Town felt as though the
17 Applicant had missed any historical resources,
18 and we were giving you the opportunity to try to
19 identify any that you thought we might have
20 missed. Does that sound right?

21 A Yes, and I think we provided you with a list of
22 what we thought should be considered.

23 Q You did. Correct. And I'm wondering whether
24 you looked at Ms. Widell's Supplemental

1 Testimony, Attachment B, where she addressed the
2 list that you provided to us.

3 A I can't remember. I think she did address
4 those.

5 Q Do you recall that she went resource by resource
6 through each one that you identified and showed
7 how in various ways it had been addressed; do
8 you have any recollection of that?

9 A I do know she addressed, I'm not sure if she
10 addressed them all. I'm sorry. Just can't
11 remember that.

12 Q We'll let the record speak for itself on that.
13 Let me ask you about the MOU then.

14 PRESIDING OFFICER WEATHERSBY: Attorney
15 Needleman? We're going to need to take a break
16 at some point. I don't know how much more you
17 have or if this is a good time?

18 MR. NEEDLEMAN: Yes. We can stop for a few
19 minutes. Probably getting close but sure.

20 A Thank you very much for that.

21 MR. NEEDLEMAN: You should have asked
22 sooner.

23 PRESIDING OFFICER WEATHERSBY: Why don't we
24 come back at 10 minutes to 11.

1 MR. IACOPINO: One of the things we're
2 going to have to do before deliberations is make
3 sure that we have a complete set of the exhibits
4 and that anybody who objects to exhibits that
5 they get those objections on the record or
6 obviously we request that you all speak with
7 each other before bringing any objections or
8 concerns to the Committee. Thank you.

9 (Recess taken 10:38 - 10:55 a.m.)

10 PRESIDING OFFICER WEATHERSBY: We're back
11 on the record. Attorney Needleman.

12 BY MR. NEEDLEMAN:

13 Q Mr. Hebert, there was a meeting, a Consulting
14 Party meeting on October 4th, 2017, in Newington
15 where the Town was offered the chance to suggest
16 mitigation measures. Were you present at that
17 meeting?

18 A Mitigation, you're talking about for historic?

19 Q Yes.

20 A Yes, I was.

21 Q And following that meeting, on December 4th,
22 2017, an email was sent from the Town to I think
23 it was Eversource, and we'll see it, that
24 contained the list I think you were referring to

1 a little while ago of historic mitigation
2 measures that the Town had an interest in.
3 Remember referencing that?

4 A I do.

5 Q So let me first pull that email up. Dawn, think
6 that's Exhibit 249.

7 And this email is from Martha Roy. She's
8 your Town Administrator?

9 A Yes. She is.

10 Q And we see that the email is conveying this list
11 to Mark Doperalski. I can't see at this point.
12 I think he was at Eversource at that point.

13 A I think he was, yes.

14 Q Okay. Yes. And there's an attachment to this
15 email which is the list. Does that sound
16 familiar?

17 A I think so.

18 Q So I want to pull that list up if we could.
19 That was the attachment. So does this look like
20 the list you were talking about earlier?

21 A It looks familiar. I haven't read the whole
22 thing, but everything looks correct.

23 Q So in response to an invitation from DHR for the
24 Town to suggest mitigation measures in

1 Newington, this is the list that the Town came
2 up with as of December 2017; is that right?

3 A That is correct.

4 Q And subsequent --

5 A There is a second page to this.

6 Q Okay. Do we have a second page? Thank you.

7 Let's look at that for a moment. Does that now
8 cover it in your recollection?

9 A In my recollection it does. I haven't read
10 every item, but I believe it's correct.

11 Q So Dawn, let's go back to the first page. And
12 am I correct that after this list was sent,
13 Eversource said that they would be willing to do
14 number 2 and 3 on the list which I think we've
15 heard about a couple of times. It was the
16 chimney repairs to a couple of historic
17 buildings in Newington. Does that sound right?

18 A That is correct.

19 Q And that commitment was incorporated into the
20 Draft MOU with DHR in July of 2018. Is that
21 right?

22 A I'm not sure of the timing of which MOU you're
23 talking about. When you came to the Town, you
24 had a draft for \$5,000 I believe was the total

1 amount for the repair of those two items.
2 Chimney, 2500, and basically \$5,000, not to
3 exceed \$5,000 for the chimney repair.

4 Q So in the July 2018 Draft MOU that incorporated
5 those recommendations, the Town was then not
6 happy with that. Is that correct?

7 A Yes. The very first item on there that we
8 considered to be true mitigation for a
9 particular Project, in other words, things that
10 were being offered were not mitigations for
11 Historic Districts or the properties that were
12 there. The true mitigation was the very first
13 item which to, first form of mitigation was by
14 avoidance. That's what that New Hampshire DHR
15 and the community need to look at for
16 mitigation. Mitigation is, this form of
17 mitigation which is being offered was not paying
18 anything for the particular properties being
19 affected. This is just a basic lump sum of
20 dollars that was being offered to the Town,
21 \$5,000, for the effects on those properties.

22 Q Well, let me go back to my question. So
23 Eversource chose 2 and 3 off of the list that
24 the Town provided and agreed to do those. Those

1 were incorporated into the MOU as July of 2018.
2 And then when the Town saw that MOU, the Town at
3 that point expressed its concerns about that.

4 Is that fair to say?

5 A Yes. We said we would not, that was not
6 satisfactory.

7 Q Is it your recollection that in the end of
8 August the MOU process was moving forward toward
9 closure when DHR paused and arranged another
10 meeting with the Town on August 24th, 2018,
11 where I think you and Ms. Boepple attended. Do
12 you remember that meeting?

13 A That is the only meeting I'm aware of.

14 Q And at that meeting --

15 A I think you indicated that there was a previous
16 meeting.

17 Q On October 4th, 2017.

18 A That's where we said we were not happy with what
19 was being offered.

20 Q You might be confused. I think you're saying
21 you were not happy with what was being offered
22 in the meeting in this August, August 24th,
23 2018, a few months ago, right?

24 A I'm talking about a few months ago with Ms.

1 Boepple.

2 Q Right.

3 A She was there with myself. And we, what was
4 being offered at the time, and we came to the
5 table with I believe we had a draft copy of it
6 to start with before we showed up. And that we
7 had sat down and we talked about several items
8 there that we wanted this list in totality, but
9 the very first thing we wanted was the very
10 first item, number one, which is a true form of
11 mitigation. So yes, this letter does seem to be
12 correct.

13 Q So at that August 24th, 2018, meeting where the
14 Town expressed its concerns about the mitigation
15 that was included in the MOU, at that point the
16 mitigation was changed, right? And it was at
17 that point that DHR proposed this historic
18 pamphlet that we've been talking about; is that
19 correct?

20 A There was some discussion about it, but we said
21 we were not happy with that.

22 Q Not happy -- let me pause.

23 A With either option.

24 Q Understood. But it was at that point that this

1 alternative option was offered; is that correct?

2 A That's correct, and we were not happy with it.

3 Q And that alternative option was then put into a
4 revised MOU, is that correct?

5 A I am not aware of the revised MOU except that
6 there was a revised MOU that apparently came out
7 of New Hampshire DHR, if I remember correctly.

8 Q And that is the Final MOU that the Committee now
9 has from DHR; is that correct?

10 A I think that is correct. I don't know for sure.

11 Q So --

12 A I think -- I just want to let you know yesterday
13 is the day when we received by email in Town
14 Hall the final signed versions. We did not
15 receive the signed versions before that as far
16 as I'm aware. It was delivered yesterday. I
17 got a call from the Town Administrator
18 yesterday, said that it had been delivered by
19 Express Mail or something like that.

20 Q So based on everything we just talked about, you
21 would agree with me that DHR was interested in
22 the Town's perspective on this and DHR gave the
23 Town the opportunity to provide input on this
24 issue.

1 A Until we objected and brought that to your
2 attention and to New Hampshire DHR we weren't
3 even going to be allowed to do it, and I remember
4 reading it very carefully in your Application
5 package, one of your submittals, I found it by
6 accident, and we weren't even involved. There
7 was no process there. We had no contact. If I
8 had not found it, I don't think to this day we
9 would have been involved.

10 Q Let me talk to you about your Prefiled Testimony
11 on page 28, line 6, where you raise concerns
12 that a vernal pool and prime wetlands in
13 Newington. Now, this testimony was introduced
14 before DES issued its final permit conditions,
15 correct?

16 A I think that's correct. Yes.

17 Q And maybe I can shortcut this. In its final
18 permit conditions, findings 28 and 29, which as
19 you may know address vernal pools and wetlands
20 in Newington and Condition 68 provides for a
21 little more than \$120,000 to Newington. Based
22 on the conditions that DES has put into the
23 Wetlands Permit, do you still have the concerns
24 that you expressed about the vernal pool and the

1 prime wetlands?

2 A If proper construction methods are completed by
3 your subcontractors or Eversource's
4 subcontractors, there would be no problem.
5 There could be a problem, though, based on
6 individual workers for contractors who make
7 mistakes either willfully or most of the time
8 it's not willfully, it's an accident, that we
9 could basically have sediments going into the
10 vernal pool because you're still within the
11 setbacks of that vernal pool. There's got to
12 be, I think, extraordinary measures taken to
13 cover that, that silt fences and proper
14 mitigation forms to keep silt from getting into
15 that particular property. Excuse me. Vernal
16 pool. Not property.

17 Q Would it be fair to say that it's your view that
18 if Eversource and its contractors comply with
19 the DES permit conditions, then your concerns
20 about these environmental impacts are satisfied?

21 A My concerns will be over when the construction
22 is done, but I think you've done everything that
23 I can see. If you follow New Hampshire DES
24 rules, we'll probably be fine.

1 Q And on the topic of contamination, in your
2 Prefiled Testimony at page 29, lines 3 through
3 10, you express concerns about contaminants,
4 PFOA and PFOS, and I won't bother to try to say
5 those for everybody. DES wetland Condition
6 number 38 addresses this, and if you remember
7 earlier I asked you about the groundwater and
8 soil monitoring plans as well.

9 Having had the opportunity now to look at
10 those DES conditions and being aware of the soil
11 and management plan, are your concerns with
12 respect to that now addressed?

13 A No. Because I'm not familiar enough with all of
14 the details about how to deal with the PFOAs and
15 the PFOS and what the real process is going to
16 be for filtering out those particular PFOS and
17 then resupplying the water. Am I getting the
18 wrong question here?

19 Q In your Prefiled Testimony, it sounded like you
20 would be happy and the one thing you were really
21 looking for which you requested on page 29 on
22 line 7 through 10 was that DES have oversight
23 over this process. That was important to you,
24 and in fact the condition provides for DES to

1 have oversight.

2 A I think that is very important.

3 Q So I guess I'm not clear, given that we have
4 these DES conditions, given the DES will
5 maintain oversight, given that we have the
6 groundwater management plan, what more do you
7 think is necessary to satisfy you on this issue?

8 A I can only answer this question based on
9 experience, and I'm going to try to answer this
10 question based on a project that happened in my
11 neighborhood just two years ago. The
12 underground cable in my neighborhood shorted
13 out. Public Service of New Hampshire had to
14 come in, Eversource had to come in and do repair
15 and they needed to get a permit from the Town
16 which they did do. The permit had certain
17 conditions on it including contacting the Town
18 or town inspector prior to starting the work.
19 They didn't. They just showed up and started
20 doing the work and actually undermined the road.
21 They weren't supposed to even be out in the
22 pavement, but they were along the pavement. The
23 compaction wasn't correct. There was no
24 oversight.

1 And this question was brought to
2 Mr. Quinlan when he testified during the
3 Technical Sessions, and he said he would be
4 personally responsible for any of those issues
5 that were going on because we wanted to know who
6 was the bottom line. Who was it we needed to go
7 to. And I remember asking that question very
8 specifically and I used this for example.

9 So yes. I am happy that DES is involved
10 and they're doing it. The question comes down
11 to is the practices in the field in the actual
12 construction in the field, is it being followed,
13 because I don't think there's going to be
14 inspectors there every minute of the day of
15 every day that work is going on.

16 So am I happy that we got certain things in
17 place, I am. Am I satisfied that all of those
18 things are going to be followed? I am not
19 because there's human error, and people want to
20 get the job done quickly, and I've been in the
21 construction business almost all of my life with
22 the Air Force and the Air National Guard, and I
23 have seen those errors of it's not a matter of
24 people doing things maliciously most of the

1 time. It's a matter of it not being properly
2 monitored and people make mistakes and then once
3 the mistake is made you can't undo the mistake,
4 and that's what I'm concerned for construction
5 of this type. It's huge. This is a big
6 project.

7 Q So it sounds like what you're ultimately saying
8 is that if Eversource and its contractors comply
9 with the permit conditions, you'd be satisfied.

10 A Yes.

11 Q Thank you, Mr. Hebert. Nothing further.

12 PRESIDING OFFICER WEATHERSBY: Questions
13 from the Committee? Anybody have questions for
14 Mr. Hebert? Mr. Fitzgerald.

15 **QUESTIONS BY MR. FITZGERALD:**

16 Q Good morning.

17 A Good morning.

18 Q Earlier in your testimony you referenced --

19 A I'm sorry. I can't hear you.

20 Q I'm sorry. Earlier in your testimony you
21 referenced a conversation with Mike Coffey, I
22 believe?

23 A Yes. I think that's his name. I know his last
24 name was Coffey. I think his first name was

1 Mike.

2 Q Maybe what's on your mind. Who knows?

3 A It is. It's on mine regularly.

4 Q And I believe that you characterized the
5 comments as PSNH will never use this crossing.
6 Could you clarify a little bit more what the
7 context? Who was Mr. Coffey or what position
8 did he have and did he express that as a
9 position of the company or was that his personal
10 opinion? Could you fill that in a little bit
11 more?

12 A Let me try to help you with that.

13 Q And the time frame also.

14 A Sure. I think it was 1998, if I remember about
15 the time frame. It was at a time when I was
16 with the Pease Air Force Base engineering, base
17 engineering, I was looking at the Project and
18 also meeting with Public Service of New
19 Hampshire on a regular basis because of energy
20 projects we had going on at Pease, and they were
21 partially funded through Eversource/PSNH.

22 Q So could you tell me why in conversation in
23 1998, long prior to even the ISO New England
24 process or any inkling of this Project would be

1 relevant, what was your purpose in bringing that
2 forward?

3 A I actually didn't bring it forward. I was
4 actually asked the question. And what I'd like
5 to do is try to say that this particular line
6 that we're talking about that's presently there
7 is also what feeds the Air National Guard at
8 Pease, and that during that time I was aware
9 that the power lines were coming down. And
10 during that conversation with Mike Coffey who
11 was at that particular meeting at the time,
12 might have been someone else, might have been
13 Donna Keating, might have been another one, I'm
14 not positive, was I'm surprised that you're
15 taking down these power lines, and he said we
16 will never be going across this Little Bay
17 because of the environmental impacts, and I said
18 I'm really surprised that you were giving up the
19 lines to the Beswicks. I guess the Beswicks had
20 negotiated with them at the time to get the
21 lines down and to get the easement moved over to
22 the side of the property.

23 Q Okay. Thank you.

24 A All right.

1 PRESIDING OFFICER WEATHERSBY: Can I follow
2 up on that?

3 MR. FITZGERALD: Sure.

4 PRESIDING OFFICER WEATHERSBY: Did you
5 understand Mr. Coffey to be like an officer of
6 Eversource? Or what authority?

7 A No, he was the head engineer for the
8 distribution section for that region. And I
9 just bumped into him a short while ago. Haven't
10 seen him in years. But he was the entire, I
11 guess now it's Mike Busby might be in charge of
12 that section. He took over from Mr. Coffey, if
13 I remember right. But he was in charge of the
14 Portsmouth District, and he was familiar with
15 these lines and was responsible for these lines
16 for getting them taken down. That's my
17 understanding of his position.

18 PRESIDING OFFICER WEATHERSBY: And did his
19 comments strike as sort of an offhand, oh, gosh,
20 if we'll never cross that or was it more
21 definitive?

22 A It was just, as you said first, it was, oh,
23 gosh, they'll never do that because of the
24 environmental impact and the outcry from

1 everybody. You know, you'll have people coming
2 out from everywhere against this if you ever go
3 across that Little Bay estuary and affect it.

4 PRESIDING OFFICER WEATHERSBY: Thank you.
5 Sorry to interrupt, Mr. Fitzgerald.

6 BY MR. FITZGERALD:

7 Q So would you characterize that as Mr. Coffey's
8 personal opinion?

9 A I do.

10 Q Okay. Thank you.

11 You also expressed concern about the
12 concrete mattresses in two ways. One, that they
13 might be visible. And two, that they might be
14 invisible and present a navigation hazard.

15 A Yes.

16 Q We had earlier testimony, I believe, and
17 discussion about the responsibility for
18 navigation in the Bay. Does the Town of
19 Newington have any authority or responsibility
20 for control of navigation in the Bay and for
21 placement of, you know, for instance, if
22 navigation buoys or other types of navigational
23 hazards were proposed, does the Town of
24 Newington have any authority or do they

1 participate in any discussions relative to that?

2 A No. We don't. We have no authority that I'm
3 aware of.

4 Q Okay.

5 A The only thing we could possibly have, we have a
6 small marina at Fox Point and possibly something
7 there about giving out permits for people to
8 park their boats there.

9 Q Okay. So if the authorities that have the
10 appropriate, if the people that have the
11 entities that have the appropriate authority
12 which I assume is the Coast Guard and maybe
13 others, I'm not sure, there was a lot of
14 discussion about maps and navigation hazards and
15 making sure that those hazards are known and so
16 on, if those authorities are satisfied and the
17 appropriate markings or whatever are, does that
18 resolve your concerns about navigational
19 hazards?

20 A I think the Coast Guard is going to address the
21 navigational hazards in the channel which is
22 where they would probably mark where the channel
23 is at. I don't think that the issues are going
24 to be addressed for the mud flats, and they

1 typically do not go there as far as I'm aware
2 of.

3 Q So who would have responsibility for that?

4 A I would think that, I would think that
5 Eversource does to properly mark, to mark those
6 in conjunction with maybe working with the Coast
7 Guard. But it's the shallow sections that I'm
8 most concerned about that was brought up
9 yesterday by Todd Selig. There was, over those
10 mud flats, there's not much water there even
11 during high tide. There's not much water. You
12 can stand up there and be above and when the
13 thing goes down, fishermen look to go in there.
14 And if you see something -- I mean, one of the
15 worst things to a boater is something that's
16 just below the surface, and that is something
17 that gets people more than anything.

18 Q As a recreational boater myself and user of
19 Great Bay often, and I have great appreciation
20 for it, I believe I asked the question of the
21 Construction Panel about the potential for
22 marking those because it was a concern to me. I
23 was thinking gee, I might run, you know, be out
24 there, and I don't stay in the channel all the

1 time and so a couple of issues were raised.

2 One is I have a responsibility as a boater
3 to monitor some radio channel that provides
4 information on that. But second, I believe I
5 asked that, about the possibility of marking
6 those in such a way that they would be
7 noticeable to the average boater, and I believe
8 that the PSNH folks at that time indicated that
9 they would be amenable to that. Any such
10 marking like that would obviously have a visual
11 impact as well. Would you prefer them to be
12 marked as a navigational hazard or prefer them
13 not to be marked?

14 A No matter how I answer that, that's a loaded
15 question.

16 Q That's why I'm asking you.

17 A I don't know the proper answer to that. I just
18 don't. I don't know how to answer that because
19 no matter what I say, it's going to be, there's
20 going to be a visual aesthetic. It depends on
21 what they use for a marking will determine the
22 visual impact. I don't know how else to answer
23 it.

24 Q Okay. Thank you.

1 DIR. WAY: Can I follow up?

2 MR. FITZGERALD: Yes. Go ahead.

3 **QUESTIONS BY DIR. WAY:**

4 Q Good morning, Mr. Hebert.

5 A Good morning.

6 Q I had a couple questions on concrete mattresses
7 as well, and in terms of the mattresses you were
8 here I think during the Construction --

9 A Yes.

10 Q You were here during part of the Construction
11 Panel. And I think obviously, they're very
12 aware of how shallow the flats are, and how
13 extended it is until you get any sort of depth.
14 Did I hear you say that your concern wasn't
15 abated but yet was, you had more concerns even
16 after listening to the Construction Panel?

17 A Yes.

18 Q And I'm just wondering if you, what specifically
19 did they say that may have given you concerns
20 that you didn't have already?

21 A I've always had concerns about this cable the
22 way it's being addressed on the mud flats.
23 There's other methods than just digging a
24 slightly shallow trough by hand, laying the

1 cable in and putting mattresses over. The
2 purpose of the mattress is because, in my
3 opinion as an engineer and civil engineer and
4 most of my life with the military, is that you
5 go ahead and put it to the depth you need it at.
6 And this is a shortcut to putting it at the
7 depth you need it at because this is very
8 expensive to put these cables down in the mud
9 flats by hand. Digging by hand in the mud, if
10 you've ever tried to do it, clamming or anything
11 along those lines, you'll know what I'm talking
12 about. It is not fun.

13 But at the Navy yard, if you look at
14 Portsmouth Navy yard, they do this quite often.
15 They do dredging.

16 Q If I may if I could interject, I understand that
17 you're not a fan of the actual concept.

18 A Sure.

19 Q And that I get. But what I'm trying to find out
20 is if there's technically something that was
21 said that you don't agree with, given your
22 background, is there something that was said?
23 Because you seem to suggest that your concern
24 increased -- let's assume that --

1 A Okay, I see.

2 Q If this was the only game in town.

3 A Sure.

4 Q What have they said that maybe gave you more
5 pause or is it still just more conceptual
6 disagreement?

7 A No. The comments I heard from Todd Selig
8 yesterday saying when he went out in the boat
9 that the tide was just a little bit off-tide was
10 that there was only nine inches of water under
11 the boat, that raised my concern and the
12 distance that it was. It is quite a bit larger
13 and longer than what I realized than what was
14 being proposed as far as the mattresses.

15 Q So what you're saying is what they're proposing
16 doesn't take into account that distance or is
17 that more just a feeling?

18 A I don't think it takes into account the
19 distance, and I think that the cheaper method is
20 to lay concrete mattresses as much as they can
21 because the other methods of digging it by hand
22 is very expensive. I think it's the distance
23 across the mud flats. I think there's more than
24 what everyone is realizing. I hope I'm getting

1 your question correctly.

2 Q I think so. I'm trying to get a sense of
3 whether there's a feeling that they're not going
4 to hit it on the head or is there something they
5 said, if they said we're going to go out 1000
6 feet and we're going to say, you say no that's
7 not enough.

8 A It doesn't seem like they're addressing like
9 they haven't done their homework. If you go out
10 there, they said they did a testing as to how
11 far the refusal was, refusal being rock with the
12 pole. They stuck it in the mud. Well, go out
13 there and take any pole you want. I don't care
14 what. A crow bar, anything, that's even
15 heavier, it's only going to go down so far in
16 the mud. They didn't do their homework. They
17 didn't see how, where the refusal was. We don't
18 know and you don't know what depth the rock is
19 at, and they said this is good enough. We're
20 just going to put the concrete mattresses on top
21 of it. If they went and did their homework as a
22 professional engineering firm should do, you go
23 out there and you put it in a building, you do
24 borings and you have test pits and test borings

1 and you actually go down to refusal. They
2 haven't done that here, and the answer to the
3 question was for them in talking with their
4 contractors is we're just going to go ahead and
5 drill a trench and lay the cable in and then put
6 concrete mattresses on top of it to protect it.
7 When they probably didn't have to do that at all
8 if they went out there and were to bury the
9 cable at the proper depth and using the proper
10 methods which is more expensive.

11 Q All right. Thank you.

12 DIR. MUZZY: Just to follow up to what we
13 were just talking about with the borings and
14 that type of thing, are you aware of whether any
15 type of environmental permitting would be
16 necessary in order to do that type of work?

17 A I would think it would be the same kind of
18 environmental -- I don't know for sure, to
19 answer you, but I think it would be the same
20 thing that they've already applied to do the
21 testing that they've done in the channel, but I
22 don't know for sure.

23 Q Thank you.

24 MR. FITZGERALD: So to follow up --

1 A Could I clarify that question, too?

2 MR. FITZGERALD: Sure.

3 A A lot of times what they will do, they will take
4 a platform with a boring machine that's on it,
5 and basically they just drive it down and it
6 puts a certain amount of force down. You can
7 drive down to 10, 20 feet with a very small
8 boring, one inch, two inch at the most, and it
9 would drive all the way down until you finally
10 hit something that was hard, and we call it
11 refusal, which would be probably a rock. All
12 right? Or ledge.

13 So that's the proper way you could do it
14 and you can do that when over extreme high
15 tides, and probably do it just about all the way
16 to the shore. You don't need much water to have
17 these particular barges with these devices on
18 them to check the depth of the rock.

19 DIR. MUZZEY: Thank you.

20 A You're welcome.

21 QUESTIONS BY MR. FITZGERALD:

22 Q To follow up on that. Is your assertion that
23 they have not done, they, PSNH and Eversource,
24 have not done the appropriate geotechnical work

1 to understand the characteristics of, the
2 geophysical characteristics of the mud flats in
3 particular and understand what it is that
4 they're proposing?

5 A Mud flats absolutely. The channel, I think they
6 probably did a pretty good job up in the
7 channel.

8 Q Okay. Is your understanding the same as mine
9 that the concrete mattresses are only to be used
10 when they cannot achieve the appropriate depth?
11 In other words, they're not proposing concrete
12 mattresses no matter what, but that when they,
13 at locations when they cannot achieve the
14 appropriate depth of excavation that that's
15 where they will be used? Is that your
16 understanding?

17 A I agree with you on the channel and those deeper
18 water sections, but going towards the shoreline
19 I do not agree that that is the method they
20 should -- in my opinion, they should have been
21 out there and done a geotechnical survey with
22 borings and to check what the actual depths are
23 so everyone would understand the true impact on
24 the shoreline.

1 I think the easy answer for them was well,
2 we'll just cover it up with mattresses. That's
3 what it seems like it is because they haven't
4 done anything other than a stiff probe into the
5 mud, and that was actually said by the technical
6 construction crew, if I remember correctly.
7 That was their method of testing.

8 Q And --

9 A And they don't know for sure what those
10 mattresses, the extent of those mattresses.

11 Q Did the Town have any ability to review the
12 Application to see that these concerns were
13 addressed anywhere in it if there was a
14 geotechnical analysis? And did you have any
15 opportunity to raise these concerns during the
16 Technical Sessions or other discussions to bring
17 them to the attention of the Applicant?

18 A We didn't even know what the mattresses were
19 going to look like until just recently. We
20 asked for photo simulations, and they did a
21 pretty good job with Durham or at least had
22 some. There was none that I'm aware of from
23 Newington and what these mattresses really were
24 concerned about.

1 If you look at Mr. Raphael's testimony, in
2 there one of his testimonies, I remember reading
3 it, he said that he suspects that over time that
4 the mattresses were going to sink into the mud.
5 And I remember reading that. I have to go by
6 reading the things that I had to work on. So
7 did the Town have an opportunity? I don't think
8 we had a complete set of methods which they were
9 going to follow. We didn't understand it. And
10 I think our focus, I'll be honest with you, I
11 think our focus was putting everything
12 underground and making sure that it did not have
13 an aesthetic effect, but I don't remember
14 reading anywhere what came out to this before
15 this Committee of proper methods for checking
16 rock and putting things under the mud. They
17 aren't burying it deep enough. I do know that
18 methods like copper dams can be put up for
19 digging. You can use barges. Different
20 methods. I think you're aware of what I'm
21 talking about.

22 Q Okay. Thank you.

23 PRESIDING OFFICER WEATHERSBY: May I just
24 jump in on that concrete mattress issue?

1 MR. FITZGERALD: Sure.

2 PRESIDING OFFICER WEATHERSBY: My
3 recollection of the testimony is a little bit
4 different. I seem to recall that they, the
5 Applicant was committing to trying to get to 42
6 inches, I think it was 42 inches, in those mud
7 flats, but only when they couldn't would they
8 use a concrete mattress. So in some ways, it's
9 always nice to know what's down there and when
10 you anticipate as far as borings, et cetera, but
11 even if they did no testing, even if they didn't
12 go out and put the pole in, if they're
13 committing to go as deep as necessary and only
14 use mattresses, if my recollection is correct,
15 and if they're committing to go to that depth
16 and only use mattresses when they cannot reach
17 that depth, does that satisfy or address your
18 concern in any way?

19 A I heard them say that, too, as well, but I seem
20 to have a pretty firm commitment on their part
21 when you look at the drawings that have been
22 submitted to everybody that there's a minimum of
23 the mattresses that are going to be up against
24 the shoreline where I think it's most visible to

1 use those mattresses simply because they can't
2 get to them with mechanics that they need to get
3 to them with. They talked about using timbers,
4 I think, and driving it onto the mud flats as
5 far as they can with a machine, but I'm not sure
6 if that was, I think there was some discussion
7 about that, but I don't want to talk about it
8 more than that because I'm not sure if I'm
9 talking about things correctly.

10 So I know there's methods by which even if
11 you get to rock about using a hydraulic ram to
12 remove on a machine to remove that rock if you
13 have to, and I've seen those methods used
14 before. This is, we're probably talking a few
15 thousand or 10,000, several 10,000s of dollars,
16 50, 60,000, I'm not sure, of extra cost on a
17 Project like this is minimal, but the impact is
18 forever. There's no reason to use those
19 mattresses along the shoreline.

20 PRESIDING OFFICER WEATHERSBY: So am I
21 hearing you correctly that you're suggesting
22 that they should remove any ledge or rock that
23 they encounter so they can get to that depth and
24 not use mattresses except perhaps where it comes

1 out?

2 A Yes. I've seen the method used at the
3 Portsmouth Naval Shipyard where I was employed
4 for several years and right in the bit, right in
5 the water, and they've had to use very hard
6 rock, remove very hard rock with those kind of
7 methods.

8 PRESIDING OFFICER WEATHERSBY: Thank you.

9 QUESTIONS BY MR. FITZGERALD:

10 Q Thank you.

11 Moving on, you expressed some concerns
12 about the use of timber mats over stone walls.
13 Were you here yesterday, I think we had some
14 extensive discussion about that?

15 A Yes.

16 Q And I think we had a photograph showing proposed
17 methodology where they would have blocks, for
18 lack of a better term, built up so that the
19 timber mats were actually a bridge over the
20 stone wall and were not in direct contact with
21 the wall? If that's the methodology used, is
22 that, does that alleviate your concerns?

23 A It does. Yes.

24 Q That was a concern of mine, and I

1 specifically --

2 A I remember you addressing that, but I didn't
3 remember the answer.

4 Q Yes. Well, it was a photograph that was
5 presented that showed it.

6 You also indicated that you felt that there
7 was enough power in the region already and that
8 this wasn't necessarily, this Project may not be
9 necessary, but at the same time you expressed
10 that the Gosling alternative would be better
11 because it provided a lot of extra power for
12 long-term. Now, my understanding of the ISO
13 process is that, and we asked a number of
14 questions about this, is that they look, that
15 the solution was proposed for ten years out. In
16 other words, they needed the solution in place
17 by 2020 but that the solution was a long-term
18 solution that was sufficient to meet the
19 long-term needs of the region, that it wasn't
20 just a ten-year solution. Is your understanding
21 of that different because you seem to indicate
22 that you would prefer the Gosling alternative
23 because it would provide more power, and I think
24 they testified that that was well beyond what

1 was necessary even over the long-term of this
2 Project.

3 A My understanding was it was a ten-year solution
4 to look out. Let me rephrase that. They look
5 out ten years, and they don't look out beyond
6 the ten years is my understanding of what the
7 rule is in place for the State of New Hampshire.

8 Q Okay. So as I said, my understanding is
9 different. My understanding is that they look
10 over the period of ten years to say what do we
11 need to do in the next ten years to address our
12 long-term needs and that if those Projects that
13 are approved get built, they are in place for
14 the long-term and address those long-term needs.

15 So if that were the correct interpretation
16 or correct understanding, would that change your
17 opinion of the needs for the Gosling Road
18 alternative because I believe we had a lot of
19 testimony that that was, for lack of a better
20 term, overkill, and they weren't just looking at
21 a ten-year time frame for the project. The ten
22 year planning horizon was when the Project
23 needed to be built.

24 A I would go along with what you're suggesting,

1 but I still honestly believe and I would be
2 willing to demonstrate that there's enough power
3 in this region to not require this transmission
4 line.

5 Q And how would you be willing to demonstrate
6 that?

7 A By going looking at the Application that was
8 submitted by Eversource, and if you look at what
9 has been said to us over the time that the
10 Gosling Road Solution would work, it would be
11 ample power, there is, they offered, this was in
12 Portsmouth. Let's think about what's going on
13 here.

14 The power line is being proposed from
15 Madbury to Durham. Excuse me. Madbury to
16 Portsmouth.

17 Q Correct.

18 A They just recently this past year put a 345
19 kilovolt line in Derry. Deerfield, excuse me.
20 In Deerfield. That Deerfield transformer which
21 is 345 to 115 feeds Madbury. Madbury, they need
22 to connect Portsmouth to, that's where the load
23 is. If you look at the load, you'll see that it
24 is increasing, but if you look at the -- trying

1 to get my thoughts here straightened out.
2 If you look at what the other option was was a
3 Gosling Road option, it was to bring power the
4 other way. It was to go from Portsmouth all the
5 way into Maine and bring it up into Maine over
6 towards Madbury, again, connecting Madbury
7 because there was a 345 to 115 solution there.

8 There is also a 345 line and if you look at
9 the Exhibit 41, PDF 21, it shows a grid, and I
10 can explain to you on that grid how this
11 transmission line would probably not be needed
12 simply because there's already a transmission
13 line that's there that surrounds the entire
14 Seacoast region. It's a loop.

15 The power line that is coming down, the
16 power that's coming now goes to Portsmouth. The
17 other way was to take a 345 line from Portsmouth
18 up to Madbury. Again, the line. If you simply
19 connected a transformer, a 345 transformer
20 already in place in Deerfield, and you put a 345
21 transformer in Portsmouth as was proposed with
22 Gosling Road Solution, there is no need to bring
23 power into that region, and this particular line
24 would not be needed.

1 Now, this came to me as a result of, this
2 is not, this is all new news to me by the way.
3 This is as a result of listening to all the
4 testimony including Mr. Andrew the other day
5 that convinced me very clearly that this
6 particular line is not needed and that a 345 to
7 115 transformer in Portsmouth and in Deerfield
8 resolves this problem about having the
9 transmission line going across Little Bay at
10 all.

11 Q So do you plan to submit that analysis to the
12 Committee?

13 A I can. Yes. This is new. I can very, I'd be
14 very willing to explain it to you if we can just
15 pull up the Applicant Exhibit number 41.

16 Q I don't think that's appropriate at the time, at
17 this point. I guess what I'm, my concern is
18 that ISO New England in its regional planning
19 process has determined through its evaluation of
20 alternatives that this is the appropriate
21 solution for the power needs of not just
22 Portsmouth but for the region.

23 A Yes.

24 Q Which includes Newington and Durham and --

1 A Sure.

2 Q -- and other towns. And that you're suggesting
3 that their analysis is incorrect and should be
4 revised is what I'm hearing?

5 A I'm not saying that the need is not there. I'm
6 saying the method by which they're going about
7 doing it --

8 Q That's what I'm saying.

9 A It was not on the table. I don't think it was
10 ever thought it. It just wasn't there. So I
11 don't know how to approach ISO New England. I
12 don't know how to do that process. And I know
13 it was brought up, but I would rather tell you
14 than go to my grave wondering why I didn't tell
15 you about this particular option.

16 And I know, look, I understand this is like
17 really late in the process. I understand that.
18 And it just dawned on me after Mr. Andrew spoke
19 that this is what it was.

20 Q Have you brought this to the attention of the
21 company at this point?

22 A I have not. This was as of last week.

23 Q Thank you. The discussion that we had relative
24 to the town master plan and the basis for change

1 there, it seems to me, and I'm characterizing it
2 in my own laymen's terms, but it seems to me
3 that the response that Mr. Needleman presented
4 from the Town to Eversource for lack of more
5 sophisticated way to put it was because we can.
6 In other words, that reference was not, had no
7 direct connection to the assertion that the Town
8 made that the use was incompatible. It just
9 made a general reference to the fact that the
10 Town can change its master plan any time it
11 wants anyway it wants. So when the Town did
12 that, and I may be just repeating what Mr.
13 Needleman said, but I guess I'm looking for
14 clarification. When the Town made that change
15 to the master plan, was there a particular
16 consideration that supported that assertion that
17 it was incompatible other than just the
18 reference that you gave from Loughlin and the
19 statute that says you can change your master
20 plan anyway you want?

21 A Well, first let me answer about the master plan.
22 The master plan is a living document and
23 according to the state laws and the RSAs, it
24 should be changed about every five to ten years,

1 or be looked at at least, and that was a point
2 at which it was in due cycle, we were at the
3 five-year point when we did make the change.

4 We had also been working and looking at the
5 rest of the master plan that was already there.
6 The rest of the master plan clearly addresses
7 that we appreciate and support transmission
8 lines outside of the residential area. That's
9 the existing master plan. That was prior to any
10 modification. Also if we -- I can quote these
11 things. I can pull it out and read it to you.
12 It also says -- and the purpose of that was to
13 try to draw in generation facilities to the
14 region and with proper infrastructure like we
15 did, we did a project several years ago with Con
16 Edison proposing a new Newington plant which is
17 there now.

18 One of their biggest concerns was not
19 having enough transmission lines to carry the
20 power out. They can come build in, but they
21 can't get it out. So we support having
22 transmission lines, and we say that very
23 specifically in our future land use in our
24 master plan that goes back to 2010 that clearly

1 states that we support it but not through the
2 residential district. What we changed was
3 clearly in support of that, plus our development
4 principles, development principle number one,
5 and I would be glad to read that for you. It's
6 just a very short read. I have it right here in
7 front of me.

8 Development principle number one basically
9 says protecting the residential area is key and
10 core to our master plan, and we have shown
11 consistently, if you look at the resident area
12 when you took a drive through it, I don't think
13 you have seen any transmission lines going
14 through it. In fact, there was a proposed
15 propane line. Not propane. Natural gas line,
16 high volume natural gas line, high pressure that
17 went, was proposed going down the exact
18 easement. This was being done like in 19, I
19 think '98, '97, thereabouts, and working with
20 them, as we did with Eversource, we tried to
21 collaboratively work with them to move it
22 outside of the residential area. With the
23 Portland Natural Gas line, they accommodated the
24 town and moved it out there. They moved it

1 right onto Pease, on to Arboretum Drive, and we
2 tried to do the same thing.

3 At the end of that, where we weren't going
4 to get any consideration for moving it, is when
5 we realized after the whole process of trying to
6 work together to try to get something done that
7 it wasn't going to work; that we had to put into
8 an official position of the Town and where we
9 were at. At that point that's when it happened.
10 When the master plan was updated. And there was
11 no way that they were willing to move it simply
12 because we have the easement, we're going to put
13 it there, and we've done all that we could
14 basically to try and mitigate the issues by
15 removing it from the residential area and the
16 Historic District.

17 And the first form of mitigation is
18 avoidance. So we were looking at avoidance to
19 avoiding the Frink Farm and putting it outside
20 of the residential and Historic District. We
21 worked at that hard. I mean, I remember Jim
22 Jiottis working with us and Sandra right here
23 working with us try to get these things done,
24 but it just couldn't happen. So we had to put

1 down, and we realized that the master plan is
2 key first to put those things in place and that
3 transmission lines are generally not considered,
4 they're an industrial grade thing and it's
5 nothing that is, industrial grade-looking towers
6 just don't look good in a residential area. And
7 we're we've been consistent since our first
8 master plan in 1951. And if you look all of the
9 transmission poles looking through the town,
10 they're in the industrial area and the
11 commercial areas. You won't find one in the
12 residential area. This will be the first.

13 Q So if I understand you correctly, what you're
14 saying is that you attempted to work out these
15 issues and that basically your last resort was
16 changing the master plan because you weren't
17 able to resolve these issues, is that --

18 A Understand changing the master plan was not to
19 change it to put a block there. The master plan
20 is to make it clear that what we're, minimum
21 requirements of avoidance, and that our master
22 plan and it was to reinforce what was already in
23 our master plan, and I would like to read this
24 just to make sure I get it.

1 The Town supports improvements to
2 electrical transmission infrastructure outside
3 the town residential district. And that's right
4 in our future land use section under electrical
5 transmission lines. We address electrical
6 transmission lines. This is unchanged, going
7 back years.

8 Q Thank you.

9 A Okay.

10 Q Mr. Needleman provided and you referenced a list
11 of proposed mitigation projects for the Historic
12 District including the chimneys and the \$200,000
13 Project and so on. I believe I read on the top
14 of that document that that was presented as
15 these are -- and I don't know if it's possible
16 to bring that back up or not, but I believe I
17 saw some language saying that it indicated that
18 these are, that Newington wanted all of these
19 projects? It wasn't like a menu to pick from,
20 but you wanted all of them? Was that the Town's
21 position?

22 A The Town's position first was that the chosen
23 form of mitigation was to bury it.

24 Q Understood.

1 A But yes, your second assumption is correct.

2 Q So I'm a little bit confused because I think you
3 indicated that they proposed to you the
4 chimneys, you felt that wasn't sufficient, and
5 then you provided them with this list? Or was
6 this list provided and they picked a couple of
7 things off of it?

8 A That list was provided, and they picked a couple
9 things off of it.

10 Q Okay. Go ahead.

11 QUESTIONS BY DIR. WAY:

12 Q So I had a couple questions on this list as
13 well, and I think you testified at the very
14 start that to do the chimneys would actually end
15 up costing you more than the benefit of doing
16 it. Why would you put it on the list, I guess,
17 in the first place; and then secondly, would
18 that be true for other items that are on the
19 list?

20 A Well, it was a list as a whole we were looking
21 at, but at the meeting we discovered that
22 there's a requirement according to New Hampshire
23 DHR was that it was going to have to be, that
24 the cost would probably be more just monitoring

1 to make sure it's getting done than to actually
2 possibly doing the work. The \$5,000.

3 Q Because what I'm trying to, I think what
4 Mr. Fitzgerald was wondering as well, if I could
5 interpret what he was saying is that, you know,
6 short of getting number one, you wanted the
7 package of the others. As a result, it was an
8 all or nothing sort of deal?

9 A For us the number one was there, but they asked
10 us for, they asked us for items that we should
11 consider. And I guess this item, these lists of
12 items were sent to Martha, and then that was
13 sent out to, I think New Hampshire DHR. I'm not
14 positive.

15 Q And so now the proposal is you get a booklet.

16 A That's correct.

17 Q And I take it you're not crazy about the
18 booklet.

19 A I think we already have a good town history, and
20 I think it's a repetition of something we
21 already have. It's not a form of mitigation.
22 It's a history, chronological history or a
23 history of what is going to happen. It doesn't
24 stop the damage from occurring, and for the

1 town's residents and people who visit the town
2 from looking at what's going to happen forever.
3 A booklet just doesn't replace that. It doesn't
4 have the same form of mitigation as burying
5 would be which would be avoidance.

6 Q You just got this updated document, did hear you
7 say, yesterday?

8 A Yes. I have the email from the Town
9 Administrator that says she just received a
10 document yesterday, the final signed document,
11 that it was sent out and we did not have, it
12 isn't, from my understanding it's not the
13 original version that we were looking at at that
14 meeting, and we just received something
15 yesterday in the mail. I haven't received it.
16 I just got an email from her yesterday.

17 Q Do you anticipate any further discussions on
18 possible amendments or revisiting or is it set
19 in stone or do you anticipate --

20 A I was hoping that something was going to happen,
21 but it looks like the agreement is already made
22 with New Hampshire -- because from what I'm
23 being told is that this is an agreement between
24 Eversource and the state agency. It doesn't

1 necessarily have to include the communities.
2 That's what I was understanding.

3 Q If it could be amended, though, would your
4 position still be the all or nothing sort of
5 approach? Or are you open to something less?

6 A I'd rather not speak for the Town on that and
7 the Historic District Commission. I think it's
8 best that I probably go back to the Town and see
9 where the Town is at because, again, our
10 position and we always had that position of
11 putting it underground, and we were afraid of,
12 to be quite honest, giving a list simply because
13 it might say oh, they're willing to settle for
14 this, and I'm just concerned that no, we really
15 want it buried underground.

16 Q It was helpful today because some of the
17 questions we had or at least I had from Ms.
18 Widell yesterday were some of the genesis of
19 some of these projects, and I think this was
20 helpful in this case.

21 PRESIDING OFFICER WEATHERSBY: Can I ask a
22 followup question?

23 DIR. WAY: Sure.

24 PRESIDING OFFICER WEATHERSBY: Newington

1 has a Historic District Commission, correct?

2 A Oh, yes.

3 PRESIDING OFFICER WEATHERSBY: Have they
4 taken an official position concerning a
5 mitigation package for the effects of above, if
6 it goes above ground, as proposed today, have
7 they taken the official position concerning what
8 would be appropriate mitigation?

9 A I'm not sure if they've actually had a public
10 meeting and had a vote on it. I don't know. I
11 can't answer that for sure, but I think some of
12 these items at the very least would be on it.

13 PRESIDING OFFICER WEATHERSBY: Thank you.

14 QUESTIONS BY DIR. WAY:

15 Q One last question. When you were told that they
16 were going to opt for the chimney repair, was
17 that a sit-down discussion or --

18 A Yes.

19 Q It was a sit-down discussion?

20 A It was a sit-down discussion at the meeting with
21 my attorney, Beth Boepple, who was here
22 yesterday.

23 Q Um-hum.

24 A And myself. And what they walked in was this is

1 what we're offering, and it just, Beth advised
2 us that this is not sufficient.

3 Q All right. That seemed like a ten-second
4 discussion. Was there more? I'm not being
5 flip. Was there more back story there?

6 A There was. We tried to see if there was any
7 flexibility and if there was other things they
8 could do. They said what else can we do. And I
9 felt like I was in the position of trying to
10 have to settle for something that was, it was
11 almost not even talking about. We spent more
12 money in attorneys almost than we did,
13 collectively.

14 Q Fair enough. Thank you very much.

15 A You're welcome.

16 MR. FITZGERALD: I have one last question.

17 PRESIDING OFFICER WEATHERSBY: Mr.
18 Fitzgerald.

19 QUESTIONS BY MR. FITZGERALD:

20 Q You indicated that sort of an overarching
21 concern that although the Project has been
22 proposed with specific plans, specific
23 monitoring, specific requirements and so on that
24 it might not be executed that way, and that the

1 result might be different than what is planned,
2 and therefore there might be issues and
3 problems. Is that fair to characterize your --

4 A In construction only. The people who are
5 standing here I think have every intention of
6 doing exactly what they're saying. It's just a
7 matter of sometimes our contractors,
8 subcontractors don't follow. That was my
9 concern.

10 Q So is this a general concern for all projects in
11 the town or is that specific to this Project
12 and/or Eversource?

13 A The Town would, here's the issue with the Town.
14 The Town issues a permit for all projects in the
15 town. We have direct control, normally there's
16 a bond. I think there's a bond that's actually
17 being proposed for this particular Project. I'm
18 not sure how far that goes. But the Town has
19 more control than what this Project has. It has
20 oversight from you, and from the state, to make
21 sure that things are done properly and then to
22 get into a more formal process if we have
23 disagreements. That I think was discussed
24 yesterday.

1 Q Okay. But do you understand that if something
2 is not performed you have the ability to bring
3 that, you, the Town, have the ability to bring
4 that to the SEC?

5 A Yes. We absolutely do.

6 Q And ask that the SEC address that?

7 A Yes. It's a longer process.

8 Q Okay. I think I'm done.

9 PRESIDING OFFICER WEATHERSBY: Director
10 Muzzey?

11 **QUESTIONS BY DIR. MUZZEY:**

12 Q Good morning.

13 A Morning.

14 Q Couple more minutes.

15 A Well, just missed it by 20 seconds.

16 Q Well then. Earlier in this docket we heard
17 testimony that within the Newington zoning
18 ordinance there are no controls for the heights
19 of towers, transmission electrical distribution
20 towers, and that it's not a prohibited use in
21 any of the zoning ordinances in all four
22 communities including Newington. I thought I
23 heard you say something different this morning.

24 Could you clarify whether there are any

1 height controls in Newington zoning ordinance
2 and whether transmission and/or distribution
3 lines are a prohibited use?

4 A Well, I read this morning about what is
5 prohibited in the town in our ordinance, and
6 basically what we need to look at is what is
7 allowed in our ordinance, and I read to you a
8 clarification of that this morning. And if it's
9 not listed it's not permitted. That's how most
10 ordinances and most towns are supposed to be
11 recorded in their ordinances or written into
12 their ordinances. That's my understanding, and
13 that's the way we have, we have specific
14 language to that that basically addresses that
15 particular issue and makes it very clear what's
16 allowed and what's not allowed.

17 Q Do you have that right in front of you? Is that
18 what you're looking at?

19 A Yes. This is what I clarified for the record
20 this morning. If you would like to, I can find
21 it, and I also have a copy of our ordinances,
22 and I think it was submitted under Newington
23 Exhibit 17. Exhibit 17. And I would like to,
24 if I could, direct you to that again.

1 Q And that's the ordinance and not the master
2 plan.

3 A That's the ordinance. That's correct. That's
4 under, and it reads, I'll say this. Zoning
5 Ordinance, Article 4, section 1, that says and
6 I'll say this in quote, "The omission of a use
7 from the list of those allowed in a particular
8 district constitutes prohibition of that use in
9 that district."

10 So we have several districts and we have
11 permitted uses there. If it's not listed, it's
12 not allowed.

13 Q And transmission lines are not allowed in the
14 Newington residential districts; is that
15 correct?

16 A That's correct per our master plan.

17 Q Or how about the zoning ordinance?

18 A It doesn't say it's permitted.

19 Q Okay. Thank you.

20 MR. FITZGERALD: Does that include buried
21 lines?

22 A No. Buried lines are permitted per our master
23 plan.

24 MR. FITZGERALD: But you just said the

1 ordinance, if it doesn't specifically allow it,
2 then it's disallowed. So does the ordinance
3 allow --

4 A Well, the ordinance allows for buried utilities.

5 MR. FITZGERALD: Okay.

6 A Okay? And if you look at my testimony, it says
7 that generally a developer comes into the town
8 that utilities must be buried underground.

9 MR. FITZGERALD: Okay. So does the
10 ordinance allow any overhead transmission line?

11 A Not through the residential area.

12 MR. FITZGERALD: Okay. Thank you.

13 **QUESTIONS BY DIR. MUZZEY:**

14 Q And similarly, in your zoning ordinance, how are
15 the, how is the height of things such as cell
16 towers, poles or anything like that addressed?
17 Is there a height which no structures can go
18 over?

19 A There's a height of 35 feet that no structures
20 can go over.

21 Q And that's just within your residential areas,
22 and there are other heights specified in
23 other --

24 A I know for sure, I know for sure the residential

1 area is 35 feet, and I do believe there is,
2 subject to check, that there is some
3 restrictions on, like we just did a hotel that's
4 being proposed, we just approved a hotel, but it
5 can be no taller than 45 feet. That's in the
6 office district.

7 Q Thank you. Earlier in the docket we also heard
8 about the potential scenic and visual impact of
9 this Project, and the Applicant's witness in
10 that area spoke about some difficulty finding
11 any information, say, in the master plan or
12 other town documents as to why some of the local
13 roads at other parts of the community were
14 considered scenic. A number of times he
15 repeated that he just couldn't find anything
16 outside of the town designating all Class V or
17 VI roads as scenic but no explanation why. But
18 I do see that the Town has a scenic road
19 ordinance.

20 A Correct.

21 Q Can you tell us what the purpose of that
22 ordinance is and does that go into any
23 explanation of why the Town feels some roads are
24 scenic?

1 A Okay. So there's many answers to that question
2 so I'm going to try to take it apart, first of
3 all --

4 (Court reporting interruption)

5 A The Town is a certified local government. The
6 certified local government allows you to apply
7 through New Hampshire DHR, I might be incorrect
8 on this, for something that's called LCHIP.
9 It's an acronym. That basically allows you to
10 apply for grants for protecting your historical
11 resources within that town, but you have to be
12 certified to get it. Not all towns have that
13 certification. We do.

14 The second part is on the scenic roads, and
15 if you would just bear with me a second I've got
16 to pull out a document. In the RSAs the state
17 laws under 231:157, Scenic Roads Designation, it
18 says, and I quote, "Any road in the town other
19 than a Class I or Class II highway may be
20 designated as a scenic road in the following
21 manner. Upon petition of ten persons who are
22 either voters of the town or who own land which
23 abuts a road to mention to the petition even
24 though -- why don't I try, I'm not going to read

1 this whole thing.

2 Q Okay.

3 A This was done many, many years ago and was taken
4 to the Town under a warrant of the Town to vote
5 it in. There was a careful process that was
6 done, it was vetted, and it's been there longer
7 than, and I've been on the Planning Board for 22
8 years, so it was there prior to me. So to try
9 to give you the history of that I cannot. I can
10 only tell you it's been there for a long time,
11 and we've used and applied that for careful
12 consideration in development of the residential
13 area.

14 If you look at, we talk about all the roads
15 left west of the Spaulding Turnpike. You drove
16 on the roads on the tour. We don't have a lot
17 of roads. It's a very small section and the
18 town is tiny. We've had the effects of Pease
19 Air Force base when they came in, and we are
20 doing everything we can to protect what is left
21 of the residential area. There's only 2.3
22 square miles that we're trying to do things to
23 protect it, and the scenic roads is one of them
24 because they are scenic. And we talked about

1 many of the areas in the Town that are, that
2 we're trying to protect. We've had a lot of
3 impact. We've lost half the Town.

4 Q Thank you. I know that the master plan is now
5 part of this record. Do you happen to know
6 whether the scenic road ordinance is also part
7 of this docket's record?

8 A The scenic road ordinance. It's not in the
9 master plan. It's in our ordinance.

10 Q Right.

11 A Right here. It is on Exhibit Number 17.

12 Q Great. Thank you very much.

13 A You're welcome.

14 Q My final question resolves around the potential
15 plan of moving the distribution lines from the
16 Frink Farm to the edge of roads including within
17 the local and National Register Historic
18 District and the potential visual effect of that
19 change. Are there any distribution lines along
20 those roads now?

21 A Yes, there are.

22 Q And do you happen to know how tall those poles
23 may be or how many lines are on those poles?
24 They're sort of their visual effect now?

1 A I can. Believe there's three phases and there's
2 different voltages along those three different
3 phases on different parts of the roads. It's a
4 mishmash of different --

5 Q Sure, sure.

6 A There's communications line there, cables, cable
7 TV, and I do believe -- I can't tell you the
8 exact height of the poles, but the poles that
9 are going to be put in its place are the
10 standard that Eversource is using from this
11 point, I guess, or a few years ago, forward, and
12 it's going to be about 8 to 10 feet taller is
13 what I gather. And like I said, they do, it is
14 an upgrade to the town to upgrade the
15 infrastructure of the town, but there is going
16 to be some impact. We're cutting the lines
17 along those scenic roads to relocate those poles
18 and probably will have to be some modifications.
19 We just don't know what the aesthetics are going
20 to look like when it's all said and done. We're
21 just concerned about the subcontractor owns the
22 poles. It's not Eversource that owns the poles.

23 Q Right. Is that the type of Project that would
24 need to go before the local Historic District

1 commission in order to award a --

2 A No. It actually comes before the Planning
3 Board, land use board, and that's per our
4 ordinance, and we would definitely include the
5 Historic District Commission to be a part of
6 that.

7 Q And when it comes before the land use board,
8 would you expect that there would be plans that
9 would clearly delineate the extent of tree
10 cutting and any other types of changes on the
11 landscape as a result of the new poles?

12 A I would think it would have to be all those
13 details.

14 Q But they're not known now, but they would be
15 when they go before your land use board?

16 A Correct.

17 Q Okay. Thank you. Those are all my questions.

18 PRESIDING OFFICER WEATHERSBY: Mr. Way?

19 **QUESTIONS BY DIR. WAY:**

20 Q One last question, I promise. Dawn, can you
21 pull up Newington Exhibit 17? I just need some
22 clarification. Great. And could we go to
23 electronic page 21. Article 7, Dimensional
24 Requirements? And I just want to make sure that

1 I'm clear here. This depicts certain
2 activities, and over on the right-hand side I
3 see maximum building height. And I see the
4 35-foot limit that you've referenced earlier,
5 but when I look at the height limits down below,
6 and maybe Dawn you could focus on that
7 paragraph. That's perfect.

8 The above-referenced height limits shall
9 not apply to church spires, belfries, cupolas,
10 domes, monuments, water towers, transmission
11 towers. That seems to signal them out from the
12 height requirements am I missing something?

13 A Yes. The transmission towers were towards the
14 cell towers like transmissions cell towers.
15 That's what, I had no idea that it was talking
16 about, that would mean electrical towers.

17 Q So you're saying that does not mean electrical
18 but that means cell?

19 A I think that was the intention of that being put
20 there when it was put there. When it was
21 actually passed, I was around when that
22 happened. Yes. Because cell, that's my
23 recollection. I may be incorrect.

24 Q And other structures not intended for human

1 occupancy.

2 A Yes.

3 Q Because that would seem --

4 A But that's towards the entire list, it's not
5 just the residential. You've got to look at the
6 permitted uses first when you tie everything
7 together. This is for all zones. It's not, the
8 section you're talking about like, for example,
9 transmission towers in the other zones it would
10 be a permitted use. But the residential area
11 we're only talking about houses. That's the
12 only permitted use there. So when you look at
13 the other uses and the other like the industrial
14 district we would allow cell towers in other
15 industrial and it would be allowed in the, even
16 transmission towers, electrical transmission
17 towers would be allowed, but if you look at the
18 permitted uses only residential homes would be
19 allowed and in the residential district. So I
20 was incorrect in saying that that would not
21 include transmission towers. It would include
22 transmission towers, electrical transmission
23 towers, in the other zones because of the
24 permitted uses.

1 Q Okay.

2 QUESTIONS BY MR. FITZGERALD:

3 Q Can I follow up on that specifically?

4 DIR. WAY: Sure.

5 Q So going to electronic page 9 of that document.
6 There's a definition for telecommunications
7 facility. That says any structure, antenna,
8 tower or other device which provides commercial
9 mobile wireless services. So if that was what
10 was meant by that height, that note on the
11 height restriction, wouldn't, shouldn't they
12 have used the term "telecommunications facility"
13 versus "tower"?

14 A I think I corrected myself when I was, when I
15 said this was that you've got to look at the
16 zone that it was in on the permitted uses. And
17 I was trying to remember about the transmission
18 towers, whether it applied to the transmission
19 towers or electrical towers. It was not a
20 listed permitted use in the residential
21 district. This covers all zones. I'm sorry for
22 that confusion. I had actually misspoken.

23 Q Was that page 21?

24 DIR. WAY: Page 21.

1 Q So you're saying this table. Yes, if you could
2 pull that back up, Dawn. Page 21, Article 7.
3 Table VI-1. When it states over on the
4 left-hand, the zone, and there are two zones,
5 residential one family and residential two
6 family, and it lists a maximum height of 35
7 feet, but you're saying that somewhere otherwise
8 these are prohibited? Is that -- I'm confused.

9 A If you go into the residential section. Let me
10 see if can find the residential section for you.
11 If you go to the residential section and it's
12 the R section, you'll find it. Z 10, if you
13 would. I would think it shows there --

14 Q Do you know what page that is?

15 A Yes. Z 10.

16 MR. SHULOCK: It's electronic 10.

17 A It talks about the uses that are permitted on
18 the bottom of that page.

19 Q Okay.

20 A Every section has uses that are permitted. That
21 chart then also has to apply, it applies to all
22 zones, not just the residential zone. It
23 applies to all zones. So if it's not permitted
24 in that zone, that note that's down below would

1 basically not apply. For example, church
2 spires, that is permitted use, I believe, in the
3 residential district, if I remember right. So
4 the, that would apply then that it would be
5 waived. But transmission lines or anything
6 other than a residential use is not permitted or
7 those permitted uses on that page.

8 If you go to the office district, which is
9 the very next page, or to the marina district
10 for the commercial district or the industrial
11 district or the waterfront industrial district,
12 you will find that that chart applies to each
13 one of those, but the chart was combined as a
14 whole for all districts.

15 Q Thank you for that clarification.

16 A Sorry for the confusion.

17 PRESIDING OFFICER WEATHERSBY: Could I
18 follow up on this issue? I'm looking at your
19 ordinance, and I'd like to speak a little bit
20 about small wind energy systems?

21 A Yes.

22 PRESIDING OFFICER WEATHERSBY: The
23 ordinance specifically says that small wind
24 energy systems are permitted in all zoning

1 districts. So those are permitted in
2 residential districts.

3 A Yes. But be aware of something. This was
4 something that was forced upon the Town and all
5 towns within the state by the state lawmakers
6 that said we can't deny windmills.

7 PRESIDING OFFICER WEATHERSBY: But this is
8 an exception to what you just said about
9 everything that's permitted is listed and
10 everything else is prohibited. Later in your
11 ordinance, it addresses small wind energy
12 systems, and those are permitted in the
13 residential district despite not being listed.

14 A That's correct, and what I would like to say is
15 that in the RSA it says that we had to accept
16 it. If you look at that, you'll find out, we
17 actually went through this test and this is part
18 of my corrected testimony --

19 PRESIDING OFFICER WEATHERSBY: I don't need
20 the genesis of how this came to be. I know you
21 don't like this and probably prefer it not to be
22 in your ordinance, and it was forced upon you,
23 but I'm just pointing out a little bit of a
24 discrepancy there. For small wind energy

1 systems which are permitted in the residential
2 districts, am I correct that transmission
3 towers -- sorry. Small wind energy system
4 towers are allowed to be 35 feet above the tree
5 canopy up to 150 feet in height?

6 A That's what it says, but it would not be
7 allowed, and it's already been tested, and how
8 it is not allowed is the FAA which the
9 residential, the airport, and we knew that when
10 this went in, but it forced upon us so we had to
11 put a section in to cover us because it is
12 allowed in all other districts. But the FAA
13 would not allow those heights. As was
14 discovered with Eversource, they thought, they
15 actually thought when they came to the town that
16 the power lines were going to be buried from
17 Gundalow Landing all the way up and through
18 Hannah Lane because of the FAA. They went to
19 the FAA, and they said no, you're about ten feet
20 below the glide path of where airplanes are
21 coming in or the permitted use of permitted
22 heights. We knew this about the windmills.

23 PRESIDING OFFICER WEATHERSBY: Right. I'm
24 not suggesting that a wind turbine would, it has

1 to be under 150 feet and nor is that the height
2 for this here.

3 A You're right.

4 PRESIDING OFFICER WEATHERSBY: The
5 ordinance says that in a residential district
6 you could have a turbine up to 150 feet assuming
7 it complied with FAA, blah, blah, blah. Okay.
8 I'm just going to leave it at that.

9 A We're not perfect and things are forced on us
10 sometimes we have no choice.

11 PRESIDING OFFICER WEATHERSBY: I
12 understand. Does anyone else have any
13 questions? Mr. Shulock?

14 **QUESTIONS BY MR. SHULOCK:**

15 Q So I apologize. I'm going to stay on the zoning
16 for a while. I know you're not an attorney and
17 I'm not looking for legal arguments. I'm sure
18 that if the attorneys find them necessary, we'll
19 get them in the briefs. I'm just looking for
20 your understanding of how your zoning ordinance
21 works.

22 A Sure.

23 Q So when you were listing at the, to update your
24 testimony, provisions of the zoning ordinance,

1 you specifically listed that public utilities
2 and transmission lines would be permitted in the
3 industrial district. Right? I don't see the
4 words "transmission line" in your ordinance
5 anywhere. So that falls under public utility?

6 A Um-hum.

7 Q Okay. Are public utilities permitted in the
8 residential district at all?

9 A No. Just the distribution lines that support
10 the residential area.

11 Q Where is that listed in your zoning ordinance?

12 A It's not.

13 Q It's not. Would you agree that those are public
14 utilities?

15 A Transmission lines?

16 Q Distribution lines?

17 A Oh, yes.

18 Q Telecommunication lines?

19 A Yes.

20 Q Telephone and electric poles?

21 A Yes.

22 Q Does the height limit apply to those poles?

23 A Obviously not.

24 Q Do you know, Exhibit 17 says that your zoning

1 ordinance was revised in April of this year. Do
2 you know when it was originally adopted in this
3 form?

4 A This zoning ordinance? All the changes were put
5 in the back. If you want to see, very last
6 page. It lists all the zones and all the
7 changes that were done, and all the changes that
8 were done that have been there forever. If
9 there's a particular thing you're concerned
10 about, I can, I would be glad to try to answer
11 those questions for you. Can you get in to Rev
12 6?

13 Q Mine goes up to Z 57, and I don't see a chart of
14 when different provisions were adopted.

15 MS. GEIGER: Perhaps I can cover some
16 clarification if I can. The Town provided me
17 with a link, and I downloaded what was in the
18 link as Newington 17. That is just the first,
19 my understanding is it's just the first 57 pages
20 of the booklet that Mr. Hebert has. It's not
21 the entirety of all of the land use regulations.
22 It is the zoning ordinances that relate to the
23 zoning in Newington. That's my understanding.

24 A I would like to be able to add that this is also

1 building code, subdivision regulations, site
2 plan review regulations and so forth. Historic
3 District regulations.

4 Q So is the chart that you referred me to within
5 Exhibit 17? And if so, do you know on which
6 page?

7 A It is -- I did not look at Exhibit 17. I don't
8 believe it is.

9 MS. GEIGER: I don't believe it is either.

10 Q Can you tell me when the provisions that you
11 quoted were adopted?

12 A Which ones?

13 Q The provision that says if it's not specifically
14 listed, it's prohibited.

15 A Oh, I have no idea. It's been there about as
16 long as I know.

17 Q The list of permissible uses.

18 A Permissible uses has changed over the years.

19 Q I assume that it has.

20 A It does, and it's almost annual, to be honest
21 with you, because a lot of times we're finding,
22 for example, the malls, the stores are not doing
23 well.

24 Q And I understand all that.

1 A Sure.

2 Q And I'm certain that if the attorneys believe
3 that it's necessary for us to know they can
4 provide that for us. That's really legal
5 research.

6 A Sure.

7 Q So do I understand correctly that the Town is
8 requesting a condition on, if we were to approve
9 this route, the Town is asking for a condition
10 that everything be undergrounded within the
11 residential district?

12 A Yes, and an additional 5,000 feet.

13 Q Now, has the Town polled all of the owners of
14 the properties within the easements to develop
15 whether Eversource has the rights to underground
16 in that area?

17 A They do not have the rights, and the Town has
18 not polled the people.

19 Q So does the Town support the use of eminent
20 domain to obtain those rights?

21 A I always think that should be the last resort.

22 Q But if that's what it comes to, if they approve
23 and they want to build?

24 A Sure.

1 Q Does the Town support the use of eminent domain
2 to obtain those rights?

3 A If this Project, I can only answer it this way,
4 and I don't mean to skirt it because I cannot.
5 If this Project was before the Planning Board to
6 put power lines or anything like we're talking
7 about from a developer, the Town would require
8 that developer, including all the land owners
9 that are there, to put the aboveground utilities
10 underground, and that's what we would have to
11 look, how we would have to look at it. So doing
12 it by eminent domain is not answered in our
13 master plan or in our ordinances, and I haven't
14 broached or gone or tried to address that issue
15 about eminent domain.

16 Q So you were here yesterday when Mr. Selig
17 testified, right?

18 A Yes.

19 Q Now, do you remember we put some photographs up
20 on the screen? I think it was Exhibit TD-UNH
21 25?

22 A Was that of the Bay?

23 Q It was of the Bay, and in particular, one
24 panoramic photo of the coastline in Newington?

1 A Yes.

2 Q I'll defer to the transcript for this, but I
3 believe I heard Mr. Selig say that that was one
4 of the most or the most developed areas of the
5 coast in Newington. Would you agree with that
6 characterization?

7 A I think there's other lands going further west
8 which is to the left of that photo which is
9 probably, which has many homes there as well,
10 several homes, but they're all on two- or
11 three-acre lots or more. The lot of them were
12 camps from way back in the 1920s that were
13 originally converted over to homes, permanent
14 homes. So it is a residence district like any
15 other district that you're looking at. That's
16 Gundalow Landing that he was pointing to. So it
17 is developed, but it's developed with open
18 spaces around with lots of trees, and in that
19 particular area they're going through, I
20 classify that as some of the tallest and old
21 growth trees that we've had in the area for a
22 long time in the Town of Newington. So it's, if
23 you've ever been, actually you were in there, I
24 think, if you did the tour. There was a

1 beautiful stand of pines and some really tall
2 trees.

3 Q So I'm still trying to get at whether you agree
4 or disagree with the statement that that is one
5 of most developed areas of the coastline in
6 Newington.

7 A No. I think the marina is more developed.

8 Q Thank you.

9 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?
10 Any questions?

11 MS. DUPREY: I do. Thank you.

12 **QUESTIONS BY MS. DUPREY:**

13 Q Good afternoon.

14 A Good afternoon.

15 Q I want to talk about the master plan for a
16 minute.

17 A Sorry. I can't hear you.

18 Q I want to talk about the master plan for a
19 minute.

20 A Okay.

21 Q So I think what I understand is that the
22 revisions to the master plan that prohibited a
23 lot of what we're talking about today occurred
24 in February of 2015. Is that correct?

1 A That's correct.

2 Q And were you on the Planning Board at the time?

3 A I was.

4 Q And were you Chair?

5 A I was.

6 Q And so were you a leader in these changes?

7 A I was, but understand that these changes were in
8 direct support of what was already in the master
9 plan which did not --

10 Q I didn't ask that. Sorry. I just asked whether
11 you were the leader of these changes.

12 A I was the Chair for the Board. I have to call
13 the Board together and the Board together
14 decides on what is approved and allowed.

15 Q Well, usually someone actually brings something
16 forward to the Board so I'm curious as to who it
17 was who brought it forward to the board.

18 A Chris Cross is the one who brought it to the
19 Board. That says so in the minutes if you read
20 the minutes for that particular thing. Chris is
21 the one who brought it to the Board.

22 Q Okay. And so this actually got voted on in
23 February of 2015.

24 A Correct.

1 Q By the Planning Board.

2 A Correct.

3 Q Not by the Town, by the Planning Board.

4 A Correct.

5 Q And why is it that no mention of this was made
6 in any of the 13 meetings that the Town had with
7 Eversource or was it mentioned to them in the
8 course of the year 2015?

9 A Well, I believe that it was mentioned, but it
10 was verbal. There was no written communication
11 about that, and it was through the context,
12 basically through me that I tried to talk about
13 these things. I can't tell you, I did not keep
14 track of dates that we met as Eversource has
15 done so meticulously, but I do remember having a
16 general conversation about that. And the exact
17 date and time, I can't tell you.

18 Q I'm not looking for the exact date and time.
19 Thanks.

20 So it's your testimony that you actually
21 had a conversation with someone from Eversource
22 and alerted them to the fact that the master
23 plan was changing, and it would prohibit their
24 plans in the residential area.

1 A It came after the long year and a half working
2 collaboratively with them and deciding that
3 going with the other options could not be met,
4 could not meet the Town. They tried to do that.
5 Eversource tried to very hard to do that. But
6 we were at a point of, my understanding was that
7 all right, we're going to be looking at our
8 master plan and changing it.

9 There was nothing here that was deceptive.
10 There was nothing that was -- so I can't tell
11 you of an exact time and even with who. I'm
12 being very honest with you. I was under the
13 understanding that they knew.

14 Q That really didn't clarify anything for me. I'm
15 sorry. So let me try and ask again.

16 You said I believe that you had a
17 conversation with Eversource. Do you remember
18 what year it was?

19 A I don't remember a date or time or year. I
20 thought it was shortly after we were going to --
21 in fact --

22 Q Do you remember --

23 A My recollection is that they knew about it, but
24 I can't tell you of a specific conversation.

1 Q Okay. And do you know who it was with or no?

2 A It was with the Outreach Committee. Mostly I've
3 been doing everything through Sandra Gagnon.
4 She's been a wonderful person to work with, and
5 evidently she doesn't remember or they don't
6 remember, I don't think there was anything bad
7 on their part. We worked together to try to
8 find solutions to many of the problems.

9 Q Okay. Thank you.

10 PRESIDING OFFICER WEATHERSBY: Mr. Schmidt.

11 **QUESTIONS BY MR. SCHMIDT:**

12 Q Good afternoon.

13 A Good afternoon.

14 Q We started as good morning. Now it's afternoon.

15 A I know.

16 Q Very quickly, I want to revisit the topic of
17 placing the lines underground. If, I can follow
18 the rationale if there's a developer that comes
19 in and has all the property rights already. How
20 would the Town handle or is there an appeal
21 process or if a developer came in and did not
22 have the property rights to place them
23 underground but had done due diligence in trying
24 to get them.

1 A Okay. So let's look at the two different
2 things. First of all, we have nothing that's in
3 here concerning -- you have the authority -- let
4 me make sure I get my thoughts together on it.

5 If we put something, the development rights
6 I'm talking about was a developer that would
7 come in to develop, say, any residential housing
8 lot or other use in another zone, they would
9 have a right with that property owner to do as
10 they wish to present to the Planning Board. If
11 it's not the property owner itself.

12 Q Right.

13 A Okay. And therefore, per the ordinance that we
14 have, and the only thing we can control is the
15 distribution lines that come through the town,
16 and those distribution lines per our ordinance
17 would have to be buried. When it comes to
18 transmission lines, you control that, and we
19 know this process. The best place we could put
20 it is in our master plan. Putting in the
21 ordinance we're basically saying we're going to
22 trump your authority, and that's not going to
23 happen.

24 Q So if a developer was running a line, a

1 distribution line, on a private road that did
2 not accommodate public utilities, would you not
3 issue appropriate permits?

4 A We would not issue a permit if they did not put
5 the utilities underground.

6 Q Okay. Thank you.

7 A And I can read that, find that ordinance for you
8 if you want me to find it.

9 Q No. That's fine.

10 A Okay.

11 Q In 2017, there was a warrant article from what I
12 understand to raise funds for the land in the
13 Knights Brook Corridor?

14 A Yes.

15 Q Did that pass?

16 A Yes.

17 Q Okay. And what was that money actually used
18 for?

19 A It hasn't been used yet. It's in correlation or
20 working with Eversource the Town's going to pay
21 a certain amount, and Eversource was going to be
22 putting in, I think, \$120,000 and the Town is
23 going to be making up the difference for the
24 purchase of that property, and that was, I

1 understand, it was due to wetlands mitigation.
2 And all of that is up to, the DES has in
3 principle agreed with it, but DES after they
4 received the funds technically could say we
5 don't see that project as viable anymore or we
6 don't support it. It can go some place else.
7 But I understand they have a queue of projects
8 that they can put money towards so anything that
9 goes into that fund can go anywhere.

10 Technically.

11 Q So does the corridor go through this area at
12 all?

13 A Yes. It's Knights Brook.

14 Q Yes. And so how would, and maybe you just
15 explained this when you said Eversource is
16 contributing 120,000. Would there be any funds
17 for the property rights of Eversource to
18 relinquish or to restrict the use to an
19 underground use? Has that been discussed at
20 all?

21 A My understanding is that this particular
22 property, the power line is not going directly
23 on it. It's an abutting property. And that
24 this is something that we wanted to put into

1 conservation and keep it into conservation.
2 It's listed, I think, in our master plan as one
3 of the most scenic views in the town. So we're
4 trying to preserve it.

5 So this helps in preserving that land
6 instead of it being developed, and Eversource
7 was willing to come forward with that money, and
8 I can remember sitting down with the Vice
9 President of Eversource, this is all a part of
10 working collaboratively, and we only have two
11 people working in our Town Hall, and I said we
12 don't have the resources to pull the books
13 together to submit it to DES. Not DES. I think
14 it's -- yes. DES. And I said would you be
15 willing to help us pull that together so this
16 project would qualify, and he said yes and he
17 did. We had one of their employees sit down in
18 our Town Hall for several days pulling together
19 all the information they needed to put together
20 this package, and that was very useful to the
21 town.

22 Q Okay.

23 A I mean, it was, they went as far as they could
24 go to try to help the Town in many ways, and we

1 tried to do the same thing. There was just this
2 one impasse of we want it underground to what is
3 left to the small residential village of
4 Newington.

5 Q Okay. Thank you. That's all I have.

6 PRESIDING OFFICER WEATHERSBY:

7 Mr. Fitzgerald?

8 **QUESTIONS BY MR. FITZGERALD:**

9 Q There's been a tremendous amount of discussion
10 about the master plan today. Is there anywhere
11 in the record that we have right now that has a
12 full complete copy of the master plan that you
13 believe is in effect right now? I think you
14 indicated the one Mr. Needleman provided this
15 morning is not accurate. Is there a full copy
16 anywhere in the record?

17 A You have the full copy with the exception of two
18 pages in Newington Exhibit 1-4, I believe. 1-4
19 has the two pages that need to be inserted.
20 That is in the utility section, page 25 and 26.
21 That's the only change is those two pages. So
22 if you take those two pages of Newington Exhibit
23 1-4 and put it into it, you have the entire
24 package.

1 Q Putting it into which document? Do we have the
2 full master plan anywhere?

3 A Yes, you do.

4 Q Mr. Needleman?

5 MR. NEEDLEMAN: Yes. We submitted it, and
6 I think maybe what Mr. Hebert missed is at the
7 very end we included those two revised pages.

8 A Up until now I did not know --

9 MR. IACOPINO: Just to clear up the record.
10 If you look at Applicant's Exhibit 27, page 481,
11 I believe it is. That is the utility easement
12 section that is the same as in Newington Exhibit
13 1-4.

14 A Thank you.

15 PRESIDING OFFICER WEATHERSBY: Any other
16 questions from the committee? Attorney
17 Iacopino?

18 **QUESTIONS BY MR. IACOPINO:**

19 Q I have just one question. You've told us the
20 reasons why the Planning Board made the change
21 to the master plan after, well, in February of
22 2015. And the question is is during your term
23 on the Planning Board, has the Planning Board
24 ever changed the master plan in response to a

1 proposed project that you're aware of? Other
2 than this one?

3 A I can't remember. Honestly, I'm trying to. If
4 you just give me a minute, just a few seconds.
5 I would like to be able to do it. I do know we
6 update it periodically. We're going through an
7 update now.

8 Q My question is in response to a particular
9 project.

10 A I don't believe we have.

11 MR. IACOPINO: Thank you.

12 PRESIDING OFFICER WEATHERSBY: Attorney
13 Geiger, do you want to do redirect now or take a
14 break?

15 MS. GEIGER: I'd prefer to take a break if
16 that's possible.

17 PRESIDING OFFICER WEATHERSBY: Why don't we
18 break for lunch given the hour. We'll be back
19 at 1:40.

20 ADMINISTRATOR MONROE: I'll be talking with
21 the parties to figure out the lineup post-lunch
22 considering where we are at.

23 (Lunch recess taken at 12:41
24 p.m. and concludes the **Day 11**

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Morning Session. The hearing continues under separate cover in the transcript noted as **Day 11 Afternoon Session ONLY.**)

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C E R T I F I C A T E

I, Cynthia Foster, Registered Professional Reporter and Licensed Court Reporter, duly authorized to practice Shorthand Court Reporting in the State of New Hampshire, hereby certify that the foregoing pages are a true and accurate transcription of my stenographic notes of the hearing for use in the matter indicated on the title sheet, as to which a transcript was duly ordered;

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this transcript was produced, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

Dated at West Lebanon, New Hampshire, this 26th day of October, 2018.

Cynthia Foster, LCR